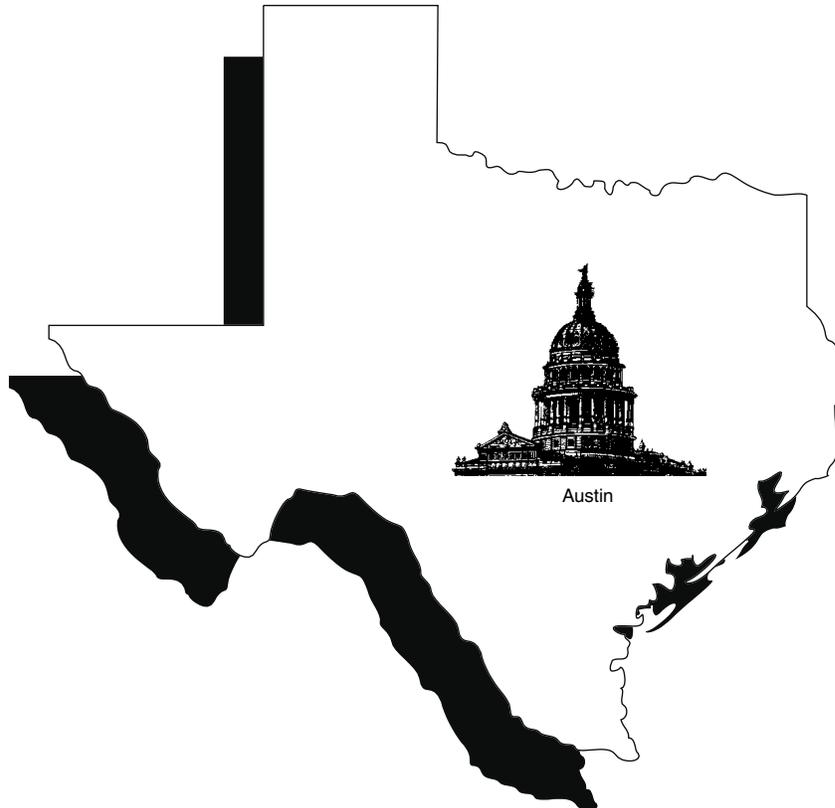


Sunset Advisory Commission



Report to the 77th Legislature



2001

SUNSET ADVISORY COMMISSION

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them. This report is the Commission staff's recommendations, which serves as the starting point for the Commission's deliberations.

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- Require TPWD to Evaluate Current and Proposed Outreach and Education Efforts for Effectiveness and Duplication.
- Require the Department to Examine Capital Projects for Appropriate Funding and Staffing Methods, and Outsourcing Potential.
- Direct TPWD to Promote Stronger Partnerships with Private Landowners to Maximize Conservation Efforts.
- Adopt the Recommendations of the Texas Cultural Heritage Plan.
- Prohibit Promotion of Alcohol and Tobacco in TPWD Operations, Events, and Publications, Including the Fishing and Hunting Regulations Guide.
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- Improve Financial Assurance Requirements and Enforcement to Address the Problem of Abandoned Wells and Polluted Sites.
- Provide Incentive to Landowners and Developers to Clean Up Contaminated Oil Field Sites.
- Require Clear Risk Assessment Standards for Site Remediation Efforts.
- Enhance State Regulation of Pipelines.
- Transfer Gas Utility Rate Cases to the State Office of Administrative Hearings.
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INTRODUCTION

Introduction

The Sunset law in Texas, enacted over 20 years ago, provides for the periodic review of the efficiency and effectiveness of state agency operations and policies. The Sunset process works by imposing a date on which an agency is abolished if the Legislature does not pass a bill to continue its operations. An agency under review must first prove to the Legislature that it is still needed. Then, legislation reauthorizing the agency and its functions must be passed and signed by the Governor. Unless all of these things occur, the agency is automatically abolished and the “sun sets” on its operations.

The 77th Legislative Session

For the 77th Legislative Session, 25 agencies are up for Sunset review. The agencies set for consideration by the Legislature this year include the majority of natural resources agencies, such as the Texas Natural Resource Conservation Commission, Texas Parks and Wildlife Department, and the Railroad Commission of Texas. Some business and economic development agencies are also up for review, including the Department of Economic Development and the Texas Department of Housing and Community Affairs. Finally, several regulatory agencies are set for consideration including the Finance Commission of Texas, Department of Banking, and Texas Funeral Service Commission.

In the 17 months from September 1999 to January 2001, the Sunset Commission worked extensively with each of these agencies to evaluate both the need for each agency, as well as its functions. The Commission held eight public meetings to review staff recommendations and hear suggestions from the agencies and the public on both the need for each agency and how its operations could be improved.

As a result of its deliberations, the Sunset Commission recommends that the 77th Legislature pass legislation continuing 23 of the 25 agencies under review, with significant improvements to each agency continued. The Commission also recommends abolishing the Texas Energy Coordination Council and making the Texas Interagency Council for the Homeless an advisory committee to the Texas Department of Housing and Community Affairs.

Altogether, the Sunset Commission adopted more than 350 recommendations to improve agency operations, increase money available for services, and make government more accessible to the people of Texas. The Commission’s major recommendations are highlighted in the next few pages. Following that is a chart summarizing the Sunset Commission’s decisions regarding the continuation of the agencies under review, an estimate of the two-year net fiscal impact of recommended changes, and the members of the Sunset Commission authoring each Sunset bill.

Fiscal Implication Summary

Overall, the Sunset Commission’s recommendations should have a positive fiscal impact. If adopted, the recommendations would have an estimated net gain/savings of more than \$1.6 million in fiscal years 2002-2003. The chart at the end of this section shows the fiscal impact by agency.

Guide to this Report

The body of this report summarizes the Sunset recommendations regarding each agency, and provides additional information on the fiscal implications of each of the individual recommendations. More detailed information on many of these recommended changes can be obtained by reading the original Sunset staff report on a particular agency, visiting the Commission’s Web site, or contacting the Sunset Commission staff directly.

In addition to the agency specific recommendations, the Sunset Commission applied its standard across-the-board recommendations to each of the agencies reviewed. These recommendations are a set of standard provisions developed by the Commission over time as it has identified common problems during reviews of agencies. The section on the across-the-board recommendations briefly explains each of these provisions, followed by a chart detailing how they were applied to the agencies under review.

Finally, this report includes a status report on agency implementation of the Sunset legislation from 1999. The Commission is charged with reviewing the way each agency implements the provisions of its Sunset bill after it goes through the Sunset review process. The section on implementation shows that more than 92 percent of the changes enacted as a result of the 1999 Sunset bills have been implemented.

Major Recommendations to the 77th Legislature



Department of Banking

- Improve Consumer Protections for Purchasers of Prepaid Funeral Contracts.
- Strengthen the Department of Banking’s Authority to Effectively Enforce Prepaid Funeral Contract and Perpetual Care Cemetery Statutes.

Office of Consumer Credit Commission

- Direct OCCC to Regulate Sale-Leaseback Transactions and Clarify in Law OCCC’s Current Regulatory Authority Over Pay Day Loans.
- Increase OCCC’s Authority Over Car Financing, and Add Periodic On-Site Inspections.

Texas Department of Economic Development

- Continue the Department for a Two-Year “Probationary” Period to Ensure That Needed Changes Have Been Implemented.
- Transfer Authority to Administer the Smart Jobs Program From TDED to the Texas Workforce Commission.
- Create a Tourism Coordinating Council in Statute to Coordinate Tourism Functions of all Agencies Involved in Tourism-Related Activities.

Texas Energy Coordination Council

- Abolish the Texas Energy Coordination Council.

Texas Finance Commission of Texas

- Continue the Finance Commission with Changes to Its Composition, Authority, and Status as an Independent Agency.

Texas Funeral Service Commission

- Continue the Commission for a Two-Year “Probationary” Period to Ensure That Needed Changes Have Been Implemented.
- Expand Regulation to Include the Burial and Final Disposition of Bodies by Authorizing the Commission to Register and Sanction Owners and Operators of Cemeteries and Crematories.

General Services Commission

- Transfer Responsibility of the State's Telecommunications Operations, Along with the Development of E-Procurement and E-Travel, from GSC to the Department of Information Resources (DIR).
- Focus GSC on Its Building, Property, and Procurement Responsibilities and Continue the Commission for 12 Years.
- Establish a New Telecommunications Planning and Oversight Council to Oversee State Telecommunications Operations.
- Allow GSC to Use a Broader Range of Contracting Methods to Design and Construct State Facilities.
- Require DIR to Develop Statewide Contracting Guidelines and Training Materials, and to Provide Ongoing Assistance to State Agencies with Their Contracting Efforts.

Texas State Affordable Housing Corporation

- Continue the Texas State Affordable Housing Corporation for Two Years.

Texas Department of Housing and Community Affairs

- Restructure the Department's Governing Board.
- Require Strategic Planning and a Simpler Funding Cycle to Serve Texans with the Greatest Need.
- Ensure That the Department's Programs Provide Fair Access to Housing.
- Preserve Expiring Affordable Housing Stock.
- Move the CDBG Program Out of TDHCA and Constitute It as an Independent Executive Branch Agency, the Office of Rural Community Affairs.
- Continue TDHCA for a Two-Year "Probationary" Period to Ensure That Needed Changes Have Been Implemented.

State Commission on Judicial Conduct

- Require the Commission to Better Inform the Public About Its Activities and the Process for Filing a Complaint.
- Enable Complainants to More Meaningfully Participate in the Complaint Process, Without Fear of Retaliation.
- Remove Confidentiality Restrictions that Impede the Commission's Ability to Effectively Oversee Judicial Conduct.

Texas Natural Resource Conservation Commission

- Create a Regulatory Structure for TNRCC Based on Incentives and Performance.
- Require the Commission to Develop a Common Definition of Compliance History and Use This Information in Its Innovative and Regulatory Programs.
- Require TNRCC to Coordinate a Comprehensive Research Effort to Support Its Environmental Regulatory Policies.
- Clarify the Executive Director's Role in Contested Permit Hearings.
- Provide TNRCC with Funding Flexibility to Better Support the Agency's Activities.

Texas Parks and Wildlife Department

- Require TPWD to Assess the State's Natural and Cultural Conservation and Recreational Resource Needs and Base Acquisition, Divestiture and Major Operations Decisions on This Assessment.
- Require the Parks and Wildlife Commission to Establish Guidelines and Policies Regarding the Department's Relationship with an Official Foundation Partner.
- Establish Standard Business Oversight Mechanisms for Commercial Ventures and Other Department Operations.
- Direct TPWD to Promote Stronger Partnerships with Private Landowners to Maximize Conservation Efforts.
- Prohibit Promotion of Alcohol and Tobacco in TPWD Operations, Events, and Publications.

Railroad Commission of Texas

- Increase Revenues to the Oil Field Cleanup Fund to Meet the State's Current and Anticipated Liability.
- Improve Financial Assurance Requirements and Enforcement to Address the Problem of Abandoned Wells and Polluted Sites.
- Provide Incentive to Landowners and Developers to Clean Up Contaminated Oil Field Sites.
- Enhance State Regulation of Pipelines.

State Securities Board

- Expand the State Securities Board From Three to Five Public Members.
- Establish Corporate Criminal Penalties, Civil Liability Against Investment Advisers, and Emergency Cease and Desist Orders for Specific Violations of the Securities Act.
- Specify That SSB Has the Authority to Inspect Securities Dealers and Investment Advisers.

State Soil and Water Conservation Board

- Require the Board to Periodically Update Its Priority Areas for Addressing Agricultural and Forestry Nonpoint Source Pollution.
- Require the Board to Re-Examine Its Financial Incentives for Establishing Water Quality Management Plans to Reflect Its Updated Priority Areas.

Texas Water Development Board

- Require TWDB to Create a Capital Spending Plan and Explore Ways to Better Address Small Community Water Needs and Emerging Water Issues.
- Require the Governing Boards of TWDB and the Texas Department of Housing and Community Affairs to Meet Annually and Be Advised by a Colonia Advisory Committee.

77th Session Sunset Summary Information

Agency	Action	Two-Year Net Fiscal Impact	Bill Author	
			Senate	House
Aircraft Pooling Board, State	Continue	No Impact	Lucio	Bosse / McCall
Banking, Department of	Continue	No Impact	Sibley	McCall
Children's Trust Fund of Texas Council	No Action	No Impact	No Legislation	
Child Support Division, Office of the Attorney General	No Action	No Impact	No Legislation	
Coastal Coordination Council	Continue	(\$11,200)	Lucio	Bosse
Consumer Credit Commissioner, Office of	Continue	No Impact	Sibley	McCall
Economic Development, Texas Department of	Continue	\$219,070	Sibley	Gallego
Energy Coordination Council, Texas	Abolish	No Impact	No Legislation	
Finance Commission of Texas	Continue	No Impact	Sibley	McCall
Fire Fighters' Pension Commissioner, Office of	Continue	No Impact	Zaffirini	McCall
Funeral Service Commission, Texas	Continue	No Impact	Zaffirini	Chisum / Bosse
General Services Commission	Continue	\$1,020,200	Zaffirini	Gallego
Homeless, Texas Interagency Council for the	Abolish	No Impact	Lucio	Gallego
Housing Corporation, Texas State Affordable	Continue	No Impact	Lucio	Gallego
Housing and Community Affairs, Texas Department of	Continue	(\$789,000)	Lucio / Zaffirini	Gallego
Judicial Conduct, State Commission on	Continue	CBE*	Lucio	Gallego / Bosse
Natural Resource Conservation Commission, Texas	Continue	\$1,545,000	Harris	Bosse / Chisum
Parks and Wildlife Department, Texas	Continue	(\$100,000)	Harris	Bosse / McCall
Pension Review Board, State	Continue	(\$90,000)	Zaffirini	McCall
Prevention of Developmental Disabilities, Texas Office for the	Continue	No Impact	Zaffirini	Bosse
Railroad Commission of Texas	Continue	**	Harris	Chisum / Bosse
Savings and Loan Department	Continue	No Impact	Sibley	McCall
Securities Board, State	Continue	(\$158,600)	Harris	McCall
Soil and Water Conservation Board, State	Continue	CBE*	Zaffirini	Chisum
Water Development Board, Texas	Continue	CBE*	Zaffirini	Chisum / Bosse
Fiscal Impact Total		\$1,635,470		

* Cannot Be Estimated.

** An estimated \$12 million annually will be generated, to the credit of the Oil Field Clean Up Fund, to support the Commission's enhanced clean up and remediation efforts.

**SUNSET COMMISSION
RECOMMENDATIONS**

State Aircraft Pooling Board



Agency at a Glance

The State Aircraft Pooling Board (SAPB) is responsible for establishing and operating a pool of aircraft owned or leased by the State. SAPB has two primary missions:

- Provide air transportation services to state officials and employees traveling on official state business; and
- Provide ground services (such as maintenance, repairs, fuel, oil and hangar space) for aircraft owned by the State.

Key Facts

- **Funding.** The SAPB budget for FY 2000 is slightly more than \$2.7 million. Estimated revenues are about equally split between appropriated receipts (\$1.4 million) and interagency contracts (\$1.3 million). SAPB generates sufficient revenues through its appropriated receipts and interagency contracts to cover cost of operations.
- **Staffing.** SAPB is authorized to employ 41.5 FTEs, all at its Austin headquarters.
- Other Key Facts

For FY 1999 SAPB flew:

- 11 passenger aircraft;
- 2,767 flights;
- 8,966 passengers;
- an average speed, for all flights, of 227 miles per hour; and
- 572,539 miles.

Board Members (3)

Bill Clayton, Chair (Springlake)

Roy Q. Minton (Austin)

Scott E. Rozzell (Houston)

Agency Head

Jerald A. Daniels, Executive Director, (512) 936-8900

Recommendations

- Establish a Better Approach to Planning for the Future of SAPB's Aircraft Fleet.
- Provide State Agencies with Current and Easily Accessible Air Travel Information.
- Continue the State Aircraft Pooling Board for 12 Years.

Issue 1

The State Needs a Better Approach to Planning for the Future of Its Aircraft Fleet.

Key Findings

- SAPB is operating an aging fleet of aircraft that increases maintenance cost.
- The SAPB does not have a program for replacing aircraft that cost the State more in operations than revenue received.
- SAPB does not estimate future demand for aircraft services and does not provide the Legislature with a long-range plan for its aircraft fleet.

While the SAPB operates an effective system of air travel for state officials and employees, its aircraft fleet is not efficiently sized for current needs. Compounding this problem is the lack of a long-range planned approach for the acquisition, replacement, or sale of aircraft for the fleet in the future. While a private aircraft charter company would have a business plan to deal with inefficient aircraft and future needs, SAPB operates on a two-year time frame and handles aircraft replacement issues on an ad-hoc basis. The agency should improve its planning efforts and provide the Legislature with better information on the future needs of the State's fleet.

SAPB handles aircraft replacement on an ad-hoc basis.

Recommendation

Change in Statute

1.1 Require SAPB to conduct long-range planning for its aircraft usage and needs.

This recommendation would require the SAPB to develop long-range planning for its fleet of aircraft. The plan should be presented biennially to the Legislature and the LBB, as a part of the agency's strategic plan; and in the agency's Legislative Appropriations Request when appropriate. The plan should project estimates of future aircraft replacement and fleet management including reduction or expansion if warranted. In developing this plan, the SAPB should consider, at a minimum, the usage for each aircraft in its fleet, the cost of operations compared to revenue of each aircraft, and the demand for each aircraft or type of aircraft.

Issue 2

The State Aircraft Pooling Board Is not Providing State Agencies with Current and Easily Accessible Air Travel Information.

Key Findings

- Outdated airfare information on the SAPB Web site inhibits accurate travel cost comparisons.
- SAPB does not provide agencies with a convenient method of coordinating shared flights.
- SAPB could more effectively coordinate Web resources related to air travel.

The SAPB is not presently providing timely and useful information for its customer agencies. Certain information is outdated and other potentially useful information, such as flight ride sharing information, is not available. Regular updating of its Web site and providing ride share information will assist its customers to make best use of the SAPB travel program.

Recommendation

Change in Statute

2.1 Require the State Aircraft Pooling Board to maintain an electronic Web site that provides current travel-related information.

This recommendation would ensure that SAPB maximizes accessibility to current travel-related information.

Management Action

2.2 The State Aircraft Pooling Board should provide ride share information through an electronic medium.

The agency would provide ride share information through its Web site or similar electronic service to interested agencies. SAPB should publicize the flight so other agencies will be aware of the availability of seats.

2.3 The State Aircraft Pooling Board and the General Services Commission should link their travel Web sites.

Linking GSC's travel management site and the SAPB site would provide SAPB additional exposure and assist agencies in their ability to make cost-effective travel decisions.

Issue 3

The State Has a Continuing Need for the Services Provided by the State Aircraft Pooling Board.

Key Findings

- The State Aircraft Pooling Board provides necessary and cost-effective travel services to state officials and employees.
- SAPB provides a flexible schedule of air transportation service to remote locations of the state.
- SAPB provides more cost-effective air transportation services than the private sector.

SAPB provides cost-effective flexible transportation for State business.

State officials and employees have a continuing need for cost-effective air transportation throughout the state. The State Aircraft Pooling Board provides such a service. Commercial air transportation is only available in 17 Texas cities, while many agencies must provide services to citizens throughout Texas' 254 counties. In fact, SAPB provided flights to 382 airports in Texas in fiscal year 1999. While charter companies offer similar services, comparative information shows that SAPB provides flight services less expensively and with a more flexible schedule.

Recommendation

Change in Statute

3.1 Continue the State Aircraft Pooling Board for 12 Years.

This recommendation continues SAPB for the standard 12-year period until 2013.

Fiscal Implication Summary

These recommendations would not have a significant fiscal impact to the State.

Department of Banking



Agency at a Glance

The Department of Banking oversees the safety and soundness of Texas' financial system. The Department's primary role in accomplishing this function is to charter, supervise, and examine state-chartered banks. The Department also oversees other depository institutions and their affiliates such as bank holding companies, trust companies, foreign bank offices, and banks chartered in other states. The Department's oversight activities are not limited to banking. Texas' Department of Banking also oversees companies selling money orders and checks, foreign currency exchange and transmission businesses, perpetual care cemetery trust funds, and prepaid funeral contract sellers.

Key Facts

- **Funding.** The Department expended \$10.1 million in FY 2000. Its revenues for that year equaled \$10.9 million.
- **Staffing.** During FY 2000, the Department employed 136 FTEs.
- **Bank and Trust Regulation.** The Department is authorized by the Texas Finance Code and the Texas Trust Company Act to oversee state-chartered banks and trust companies. The Department currently oversees 370 state-chartered banks and 33 trust companies. The Department is also responsible for regulating foreign bank offices and interstate branches of state banks.
- **Non-Bank Regulation.** The Department is responsible for regulating perpetual care cemeteries, prepaid funeral contract sellers, check sellers, and currency exchange and transmission businesses. Currently, the Department regulates 227 perpetual care cemeteries, 438 prepaid funeral contract sellers, 49 check sellers, and 84 currency exchange and transmission businesses.

Board Members (9)

This agency is overseen by the Finance Commission, which also oversees the Savings and Loan Department and the Office of Consumer Credit Commissioner.

W.D. Hilton, Jr., Chair (Greenville)

Vernon Bryant, Jr. (Weatherford)

Jacqueline G. Humphrey (Amarillo)

Deborah H. Kovacevich (Jewett)

Marlene Martin (San Antonio)

Manuel J. Mehos (Houston)

Department of Banking



Victor (Buddy) Puentes, Jr. (Pantego)

John Snider (Center)

Robert V. Wingo (El Paso)

Agency Head

Randall James, Banking Commissioner, (512) 475-1300

Recommendations

- Continue the Department of Banking for 12 Years.
- Improve Consumer Protections for Purchasers of Prepaid Funeral Contracts.
- Strengthen the Department of Banking's Authority to Effectively Enforce Prepaid Funeral Contract and Perpetual Care Cemetery Statutes.

Issue 1

Texas Has a Continuing Need for the Department of Banking.

The mission of the Department of Banking is to ensure the safety and soundness of the financial services system in Texas. As part of this mission, the Department supervises state-chartered banks, trust companies, and other non-bank entities including perpetual care cemeteries, prepaid funeral contract sellers, check sellers, and currency exchange businesses. The Department charters or licenses and regulates each of these industries to ensure that Texans' money is handled in a safe and sound manner. The Sunset Commission determined that the Department should be continued for another 12 years.

The Department helps ensure that money in state banks and trusts is handled in a safe and sound manner.

Recommendation

Change in Statute

1.1 Continue the Department of Banking for 12 years.

This recommendation continues the Department for the standard 12-year period until 2013.

Issue 2

State Law Lacks Reasonable Consumer Protection for Prepaid Funeral Contracts.

Key Findings

- Some consumers purchasing prepaid funeral contracts through installment payments are required to pay finance charges.
- Consumers who cancel their prepaid funeral contracts do not receive reasonable refunds.
- Some consumers and their estates do not receive the full value of their money upon time of death.
- The types of prepaid funeral contracts used are not standardized and may confuse consumers regarding anticipated benefits.

- Other states require greater consumer protections for their prepaid funeral contract sales.

The current prepaid funeral contract statute does not adequately protect Texas consumers purchasing prepaid funeral contracts. Under the current statute, contract sellers are allowed to assess finance charges, make contracts nontransferable, and keep all interest earned on a consumer's original investment.

The Sunset review identified several areas in the prepaid funeral contract statute that require change to better protect the consumers' interest. Changing the statute to reflect more of the consumers' interest would help make prepaid funeral contracts more reasonable investments for Texans.

Recommendation

Change in Statute

Consumers who cancel a prepaid funeral contract should be assured of a reasonable refund.

2.1 Prohibit the use of finance charges on all prepaid funeral contracts.

This recommendation would remove the provisions in statute allowing for contract sellers to attach finance charges to installment payments and replace them with the simple prohibition of the practice.

2.2 Allow consumers to receive 50 percent of the interest earned from their investment upon cancellation of a prepaid funeral contract.

This recommendation would allow consumers to cancel their prepaid funeral contract and receive their original principal and 50 percent of the accrued interest. The other 50 percent of the accrued interest would remain with the contract seller. Allowing consumers to receive a refund with some of the earned interest would enhance the portability of funeral contracts by allowing consumers to use their refunds to purchase contracts elsewhere.

As part of this recommendation the contract seller would have to document actual services provided before cancellation to justify retaining the 10 percent service charge authorized by law. The Department of Banking would have to adopt rules determining what criteria a seller must meet in order to collect their service charge.

2.3 Require that consumers or their estates receive 50 percent of the remaining interest after the costs of the funeral are covered.

This recommendation would ensure that interest earned in excess of the actual costs of the funeral are shared evenly between the contract seller and the consumer's estate. Under this recommendation, 50 percent of the remaining earned interest would go to the consumer's estate, while the other 50 percent would remain with the contract seller.

2.4 Require that prepaid funeral contracts be written in plain, clear language with full disclosure of services that are and are not provided.

This recommendation would require prepaid funeral contract sellers to use contracts written in plain language that can be easily understood by the average consumer. As part of this recommendation, all contracts would be required to have a standardized disclosure box listing those funeral goods and services provided by the contract, and those that are not. The disclosures would also include a discussion of the circumstances under which the contract may be altered after death.

Prepaid funeral contracts should clearly disclose what services are and are not covered.

Issue 3

The Department Lacks the Authority to Effectively Enforce Statutes Regarding Prepaid Funeral Contracts and Perpetual Care Cemeteries.

Key Findings

- The Department lacks adequate enforcement authority over perpetual care cemeteries and prepaid funeral contract sellers, particularly for repeat offenses.
- Neither the Department of Banking or the Finance Commission have broad rulemaking authority with regard to perpetual care cemeteries.
- State law limits the Department of Banking's ability to examine the records of perpetual care cemeteries.

These statutory limitations preclude the Department from effectively enforcing state statutes. The Sunset review identified several changes that would address these problems, thus better enabling the Department to better enforce its statutes and protect consumers.

Recommendation

Change in Statute

Repeated violations by prepaid funeral contract sellers and perpetual care cemeteries should be subject to increased fines.

3.1 Authorize the Department of Banking to use administrative penalties against perpetual care cemeteries found in violation of the Code, and authorize the Department to increase penalties for repeat violations by prepaid funeral contract sellers and perpetual care cemeteries.

This recommendation would authorize the Department to use administrative penalties against perpetual care cemeteries. The applied penalties should be the same as those currently used against prepaid funeral contract sellers and should not exceed \$1,000 for each day the violation occurs. This recommendation would also authorize the Department to increase fines for repeat violations by prepaid funeral contract sellers and perpetual care cemeteries.

3.2 Grant the Finance Commission rulemaking authority over perpetual care cemeteries regulated by the Department of Banking.

This recommendation would vest the Finance Commission, which oversees the Department of Banking, with rulemaking authority for perpetual care cemetery regulation. Rulemaking authority is a key component necessary for effective regulation.

3.3 Allow the Department of Banking to review all necessary records relating to perpetual care cemeteries.

This recommendation would authorize the Department to examine the books and records of a perpetual care cemetery other than those relating to its trust fund. These records include, among other items, a cemetery's operating expenses, financial statements, consumer complaint files, and the cemetery's maps and plats.

Fiscal Implication Summary

These recommendations would have no overall fiscal impact to the State. Some additional revenues could be generated by increasing the Department's enforcement authority over perpetual care cemeteries and prepaid funeral contract sellers. That amount, however, could not be estimated for this report.

Children's Trust Fund of Texas Council



Council at a Glance

The mission of the Children's Trust Fund of Texas Council (CTF) is to prevent child abuse and neglect in Texas. To this end, CTF provides grants to community-based organizations to implement prevention programs. To provide grant recommendations, CTF develops local child abuse and neglect prevention councils (Family Pride) or builds on existing community coalitions. CTF also coordinates statewide public awareness campaigns and distributes public education materials.

CTF provides grants to community-based organizations to implement prevention programs.

Key Facts

- **Funding.** In fiscal year 2000, CTF's budget was about \$2 million. The agency expended about 85 percent of its funding on direct services. CTF is primarily funded through the collection of \$12.50 from each marriage license fee in Texas.
- **Policy Body.** CTF is governed by a Council composed of nine members appointed by the Governor to serve six-year staggered terms.
- **Staffing.** CTF employs four full-time employees, all located in Austin.
- **Prevention Grants.** CTF awards grants to organizations seeking to provide direct service programs to the community at large or to specific populations at risk for child abuse and neglect. In fiscal year 2000, CTF awarded 54 grants with an average grant award of \$25,052.
- **Family Pride Councils.** CTF uses 51 Family Pride Councils to review local grant applications, make recommendations to CTF regarding funding decisions, and promote the awareness of child abuse and neglect in their communities.
- **Grant Monitoring.** CTF staff visit each program at least once during the three-year funding cycle and provide technical assistance when necessary.
- **Public Awareness.** CTF funds public awareness initiatives on issues such as Shaken Baby Syndrome. The agency also publishes a wide variety of materials on child abuse and neglect prevention issues, and coordinates conferences to educate the public on these issues.

Children's Trust Fund of Texas Council



Council Members (9)

Anne Crews, Chair (Dallas)
Gigi Edwards, Vice Chair (Austin)
Patricia Aguayo (El Paso)
Joe Cordova (Fort Worth)
Kathleen Ehlinger (Raymondville)
James Louis Lukefahr (League City)
Judy Wilson Semlinger (Lufkin)
Katherine Sosa (Floresville)
Sederick E. Susberry (Houston)

Agency Head

John Chacon, Executive Director, (512) 833-3443

Instructional Provision for the Sunset Review of CTF

The Children's Trust Fund of Texas Council is subject to a special-purpose review. In the review, the Sunset Advisory Commission shall:

- 1) determine whether the council has improved its management efforts, reduced administrative costs, and improved its working relationship with other state agencies;
- 2) monitor the council's efforts to comply with directives or requirements imposed on the council by the 76th legislature, Regular Session, 1999; and
- 3) perform any other analyses that the commission determines are appropriate.

Approach

During the interim before the 76th Legislature in 1999, Sunset reviewed the Children's Trust Fund of Texas Council (CTF). Sunset staff recommended abolishing CTF as an independent agency and transferring its functions to the Community Initiatives Division at the Department of Protective and Regulatory Services (PRS). While this recommendation was not adopted, concerns were raised about agency management and spending during the legislative appropriations process. As a result, the Legislature required the Sunset Commission to conduct a special-purpose review of CTF and prepare a report to the 77th Legislature. The text of this provision is shown in the textbox, *Instructional Provision for the Sunset Review of CTF*.

Key Findings

- While management at CTF has improved, the agency faces continuing challenges.
- CTF has reduced administrative costs as required by the agency's appropriation rider.
- CTF has significantly improved its working relationships with other state agencies.
- CTF has partially complied with the Sunset Commission's management recommendations.

CTF has taken several positive steps to improve its operations. The agency relocated to Austin in the same building as the Texas Department of Protective and Regulatory Services, greatly increased collaboration with other state agencies, and significantly reduced its indirect administrative costs. Many of these improvements coincided with the hiring of a new Executive Director in December 1999.

However, CTF continues to have significant challenges, partially due to the agency's limited resources. To address these issues, CTF should consider outsourcing some of its administrative functions. CTF could contract with several state agencies, including the Texas Rehabilitation Commission, HHSC and PRS, for evaluation of programs, payroll, human resources, purchasing, equal employment opportunities, and information systems assistance. Alternatively, the Legislature may wish to consider whether to administratively attach CTF to another state agency, such as PRS or HHSC. This option would allow CTF to maintain an independent board, but receive administrative services and increase coordination with the host agency.

CTF continues to have
significant
challenges, partially
due to the agency's
limited resources.

Given its limited resources, CTF should prioritize its duties and focus on the effective disbursement of grant funds, monitoring and assistance to grantees, and evaluation of programs. CTF could effectively assess programs by compiling existing evaluation data submitted by grantees.

CTF should also take steps to fully implement the 1998 Sunset recommendation to allow existing organizations with a child abuse prevention focus to perform Family PRIDE Council functions, even if the membership is not identical. In addition, CTF should consider consolidating certain inefficient Councils with existing local organizations with a child welfare focus. The agency should also implement the Sunset recommendation to develop performance measures for the Councils.

Finally, the structural conditions that led to the 1998 staff recommendation to transfer CTF to PRS' Division of Prevention and Early Intervention remain in place. Duplication and fragmentation of services still exists, and CTF continues to have difficulties expanding its grants statewide. The Legislature may wish to review the organizational structure of child abuse prevention programs in the future.

Recommendation

The Commission took no action regarding the Children's Trust Fund of Texas.

Office of the Attorney General - Child Support Division



Agency at a Glance

The Office of the Attorney General (OAG), through its Child Support Division (Division), is the state agency designated to provide services under Title IV-D of the Social Security Act and Chapter 231 of the Texas Family Code. The services, among other things, include establishment of paternity, establishment of support obligations, collection of child support, distribution of child support payments and enforcement of child support orders.

Key Facts

- **Funding.** The Division's funding for fiscal year 2000 was about \$187 million. Of this amount, approximately 67 percent was federal funds.
- **Staffing.** The Division employs 2,524 staff. About 500 staff work in the central office in Austin, while the remainder work in field offices divided among eight geographical areas throughout the state.

Other Key Facts

- Each year, Division court filings represent 50 percent of all family law filings in the state.
- Child Support Cases - FY 2000: 1,058,075
 - Former TANF 457,924
 - Never TANF 315,860
 - Current TANF 178,294
 - Medicaid Only 105,997
- The Division processed 7.8 million payments in fiscal year 2000.
- More than 50 percent of the caseload involves children born out of wedlock.
- About 55 percent of the caseload has an order for support.
- Sixty percent of the noncustodial parents in the caseload make less than \$20,000 per year.
- The Division processes approximately 1.2 million phone calls per month.

Approach

Because of recurring problems with operation of the State's child support program, the 76th Legislature directed the Attorney General to redesign and improve the program, and required the Sunset Commission to analyze and report on those efforts. To assess this improvement, the Sunset Commission analyzed the degree to which OAG :

- improved all elements of the child support program;
- resolved computer system implementation issues;
- complied with federal reform mandates; and
- improved customer service and increased client satisfaction.

Analysis

The Office of Attorney General reports significant improvement in the performance of the child support program.

- Following the implementation of the Texas Child Support Enforcement System (TXCSES) in September 1997, the Division failed to meet performance goals for five of its six key measures in fiscal year 1998. The Division fell below acceptable variance levels in three measures. The initial Sunset review of the Division took place during this time period and the report highlighted extensive performance problems. Since stabilizing the computer system, making management changes, and with the strong Texas economy, performance has significantly improved. In fiscal year 2000, the Division has now exceeded goals in five of its key measures.

Computer systems, a major problem area for the Child Support Division in 1997 and 1998, are now operating well, though additional work remains.

- **Lack of high-level planning.** To address high-level planning, the Division created a Deputy Director for Information Technology (IT) position and consolidated the child support technology functions.
- **System unavailability.** Currently, nightly batch processing usually finishes with three to four hours to spare. In addition, the average end of month processing has declined from 30 hours to 12. TXCSES availability improved from 88 percent in August 1998 to 97 percent in August 2000.
- **Undistributed payments.** The Division continues to work to reduce the volume of undistributed payments. The Division

The follow-up review found much progress with more work to be done.

has directed a Financial Process Redesign team to correct computer and processing problems that lead to collection holds and to automate certain corrective actions. By January 2001, the Division plans to have the automated system in place to identify and release several categories of the holds.

Currently, the Division is on track to meet all requirements of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).

- On December 28, 2000 OAG submitted to the federal Office of Child Support Enforcement (OCSE), required certification on most of the PROWORA requirements. During January and early February, OAG is will complete the required documentation on the remaining requirements. OCSE is scheduled to conduct a field certification visit on May 13, 2001. The OAG reports that it will have completely documented compliance with all PROWORA requirements by that time.

The Division has shown significant improvements in Customer Service.

- The Division conducted a customer service survey to determine the level of customer satisfaction with its program. Based on a similar survey conducted in 1998, the 2000 Customer Service Survey shows an increase from 51 percent to 63 percent in customer satisfaction for custodial parents. In addition, the answer rate for phone calls has increased from 17 percent in 1998 to 95 percent in 2000.

The Child Support Division has implemented or partially implemented all of the provisions of its Sunset legislation, and management recommendations made by the Sunset Advisory Commission in its 1999 Sunset Report to the 76th Legislature.

Recommendation

Based on the Division's progress and implementation of its 1999 Sunset legislation, the Commission took no further action regarding the Attorney General's Child Support Division.

The Child Support Division has mostly implemented the changes required by its 1999 Sunset review.

Coastal Coordination Council



Council at a Glance

The Coastal Coordination Council (Council) administers the Texas Coastal Management Program, linking federal, state, and local activities along the coast. The Council is a network of state agencies, each with its existing responsibilities affecting coastal natural resources. In this way, the Council relies on the activities of its member agencies to make the Coastal Management Program work without creating a new bureaucracy.

The Council's mission is to provide for effective and efficient management of coastal natural resource areas by continually reviewing the issues affecting the Texas coast, and coordinating the State's response to those identified problems.

The Council's major responsibilities include:

- reviewing government actions that affect the Texas coast and certifying that they are consistent with the Texas Coastal Management Program;
- passing federal funds through to coastal communities for projects that help control erosion, promote responsible development and coastal access, and enhance critical areas;
- helping small businesses and individuals identify and prepare the permit applications and supporting documents they need to conduct business in the coastal region; and
- preparing and submitting the Texas Coastal Nonpoint Source Pollution Control Program, as required by federal law.

Key Facts

- **Funding.** The State receives approximately \$2 million per year in federal coastal management funds, and the Council awards 90 percent of these funds as grants to coastal communities. The Council does not receive an appropriation, but its activities are funded through the Texas General Land Office (GLO).
- **Staffing.** GLO has three employees dedicated full time to Council activities. Other GLO employees support Council activities on an as-needed basis.
- **Organization.** The Legislature created the Council as a "networked" agency instead of creating a new agency to link existing state programs with authority over coastal resources.

Coastal Coordination Council



Council Members (11)

David Dewhurst, Chair, ex officio, Commissioner, Texas General Land Office

Michael Williams, ex officio, Commissioner, Railroad Commission of Texas

Dr. William Clayton, Local Government (Galveston)

John Barrett, Agriculture (Edroy)

Bob Dunkin, Business (San Benito)

Elizabeth Nisbet, Coastal Resident (Corpus Christi)

Jack Hunt, ex officio, Texas Water Development Board

Robert Huston, ex officio, Texas Natural Resource Conservation Commission

John Johnson, ex officio, Texas Transportation Commission

Donald Swann, ex officio, Texas State Soil and Water Conservation Board

Mark Watson, Jr., ex officio, Parks and Wildlife Commission

Council Contact

Diane Garcia, Council Secretary, (512) 463-5385

Recommendations

- Continue the Coastal Coordination Council for 12 Years.
- Enhance Public and Local Government Input in Coastal Management Efforts.
- Add the Council's Grant-Making Responsibility to Its Enabling Law.
- Require the Council to Submit a Biennial "State of the Coast" Report.

Issue 1

Continue the Coastal Coordination Council.

Key Findings

- The Coastal Coordination Council is the State's chosen vehicle for administering a coastal management program.
- All coastal states but one have established federally approved coastal management programs.
- The Council coordinates the State's coastal management activities without additional bureaucratic layers or high cost to the State.

Texas administers its coastal management program by linking the efforts of seven existing agencies with authority over the Texas coast, rather than creating a new agency. This "networked" approach provides a forum for local governments, businesses, and other users of coastal resources to address the many problems affecting the Texas coast. This approach increases the State's response to priority coastal issues, including coastal erosion, wetlands protection, water quality, dune protection, and shoreline access. Further, it allows the State to develop a coordinated, unified approach when dealing with federal and local agencies, and to access federal funds for coastal improvement projects.

Recommendation

Change in Statute _____

1.1 Continue the Coastal Coordination Council for 12 years.

This recommendation continues the Council for the standard 12-year period until 2013.

Issue 2

The Council Has Not Taken Full Advantage of Public and Local Government Input in Coastal Management Efforts.

Key Findings

- State and federal law require public participation in the ongoing development of the Coastal Management Program.

- The Council does not receive the public input it needs solely from its four Governor-appointed members.

Public participation is an important element of the State's Coastal Management Program. However, other than the Council's quarterly meetings, the public has limited opportunities to inform the Council about issues of coastal concern. These recommendations would improve the Council as a forum for receiving input from the public and raise the level of public and local government participation in the ongoing development of the State's Coastal Management Program by adding a public member and a second local government representative. Allowing any one member to refer consistency questions directly to the Council would provide a direct method for the Council to hear issues of coastal concern, without affecting the safeguards that prevent the Council from second-guessing a state agency action.

Recommendation

Change in Statute

2.1 Add two members to the Council to increase public and local government representation.

These recommendations would raise the level of public and local government participation in the State's Coastal Management Program.

This recommendation would add two additional governor appointees, bringing the total number of Council members to 13, with six members appointed by the Governor and seven agency heads. The new public member would be required to have a demonstrated interest in preserving and maintaining the coastal region's ecological, aesthetic, and recreational value, but would not be required to live in the coastal zone. The recommendation would also add a local government elected official, bringing the total number of local government representatives on the Council to two.

2.2 Remove the requirement that advisory committee members reside in the coastal region.

This recommendation would not change the Council's current statutory authority to create advisory committees as needed, but would open the potential pool of advisory committee members to any person with expertise in coastal matters.

2.3 Allow any member of the Council to refer a consistency issue to the full Council.

This recommendation would remove the requirement that three members must agree to refer a consistency issue before the Council can review it. This recommendation would not change existing statutory provisions designed to prevent delays from separately reviewing actions approved under state agency rules deemed consistent with the Coastal

Management Program. As a result, this recommendation would not cause any additional reviews of state agency actions. It could, however, result in the Council having to meet to review a federal agency action for consistency with the program goals and policies, if a Governor-appointed member or a state agency ex officio member refers an issue to be reviewed. Any review of a federal action would be subject to the existing procedural safeguards, such as the 45-day time limit for the Council to make its determination, designed to prevent undue delays of proposed activities.

2.4 Require the Council to set aside time during all meetings for public comment on any coastal issue.

This recommendation would codify a current practice of the Council and the Executive Committee.

Issue 3

The Council's Statute Does Not Reflect Its Role as a Grant-Making Agency.

Key Findings

- Although small compared to many state programs, the Council's grant program is a vital part of Texas' coastal management efforts.
- The Council lacks statutory guidance for its grant-making responsibility.

The Council has the ability to use its grant program to address the State's long-term coastal needs. With approval of the Texas Coastal Management Program in 1997, the State began receiving approximately \$2 million a year in federal grants. The Council passes these funds through to local governments and other entities for coastal projects, such as construction of public facilities for recreation and public access. If the coastal region continues to grow as expected, Texas will face challenges to prevent loss or degradation of wetlands, dunes, water quality, and public shoreline access. With these needs, and the potential for additional federal coastal initiatives, the Council should be ready to take full advantage of new programs and funding.

By adding the Council's grant-making role to its current statutory duties, the State would be in a better position to seek additional federal dollars and ensure accountability for those funds. In addition, this recommendation would provide the basis for future legislative guidance on how coastal management dollars are to be spent as new funding programs become available.

Recommendation

Change in Statute

3.1 Add the Council's grant-making responsibility to its enabling law.

Adding the Council's grant-making responsibility to its enabling law would not affect GLO's role in administering Coastal Management Program grants.

This recommendation would simply codify the Council's authority to award grants and would require the Council to adopt rules establishing the procedures for making any determination related to awarding a grant. This recommendation would not affect the General Land Office's designation under federal rules as the single state agency responsible for receiving and administering Coastal Management Program grants. To the extent that additional funds beyond the scope of the current Coastal Management Program become available, this recommendation would authorize the Council to receive and spend those funds for any project that furthers the goal of protecting and preserving the state's coastal natural resources.

Management Action

3.2 The Coastal Coordination Council should target current grant dollars to more projects that promote conservation and preservation of coastal natural resource areas.

3.3 The Coastal Coordination Council should seek to maximize federal funds for the conservation of coastal resources.

These recommendations direct the Council to take full advantage of its coordinating and grant-making responsibilities. The Council should focus grant dollars on efforts such as acquisition of land for parks or preserves, restoration of dunes and wetlands, data collection, and comprehensive planning. As a "networked agency," with representation of the State's natural resource agencies, the Council is uniquely positioned to seek additional federal funds for identified needs. As a starting point, the Council should seek available federal funds for wetland preservation and restoration.

Issue 4

Require the Council to Submit a Biennial “State of the Coast” Report.

Currently, the Council produces a Texas Coastal Management Program Annual Report containing background information on the Program as well as Council achievements and activities. While the report touches upon problems affecting the coastal area, it does not specifically address challenges associated with population growth, infrastructure needs, and use of coastal resources.

Recommendation

Change in Statute

- 4.1 Require the Council to submit a biennial “State of the Coast” report before each legislative session to highlight population growth, infrastructure needs, and use of resources on the coast.**

This recommendation would require the Council to cover these subjects as part of its annual report, specifically making the report available before each legislative session.

Fiscal Implication Summary

One recommendation will have a fiscal impact to the State.

Issue 2 Adding two members to the Council would have a fiscal impact to the State, resulting from travel expenses for attending meetings. These costs are estimated at \$5,600 annually.



Agency at a Glance

The mission of the Office of Consumer Credit Commissioner (OCCC) is to regulate the credit industry and educate consumers and creditors to produce a fair, lawful, and healthy credit environment for Texas. OCCC regulates businesses that advance cash or loan money and that sell merchandise on credit, including pawnshops and their employees.

Key Facts

- **Funding.** OCCC's budget for fiscal year 2000 was about \$2.4 million. The agency collects all of its revenue from fees levied from the regulated industries.
- **Staffing.** OCCC employs 47 full-time employees, with 28 working at the agency's headquarters in Austin and 19 in Dallas, Houston, San Antonio, and the Rio Grande Valley.
- **Licensing and Registration.** OCCC licenses regulated lenders, pawnshops, and pawnshop employees. OCCC also registers creditors who finance the sales of their goods and services. In fiscal year 2000, the agency processed 3,836 applications and registered 1,992 new creditors. OCCC regulates a total of 20,541 businesses, and 5,050 pawn employees.
- **Examination and Enforcement.** OCCC examines licensed lenders and investigates creditors, licensees, and some license applicants. Examinations focus on consumer protection and compliance with the Texas Finance Code. The agency currently regulates about 5,300 licensed lending locations. Examinations generally take place every 12 to 18 months.
- **Consumer Complaint.** OCCC assists consumers in resolving complaints with creditors, and provides mediation when necessary. Complaints are usually received on a toll-free number that the agency operates. The largest single category of complaints (34 percent in fiscal year 2000) involves car dealers, who are governed by a law authorizing limited enforcement action.
- **Education.** OCCC informs consumers on credit use and promotes consumer resources and assistance, including the agency's consumer help line. The agency uses training videos, newsletters, and educational displays to fulfill its mission. In fiscal year 2000, the education efforts reached 10 percent of Texans.



Commission Members (9)

This agency is overseen by the Finance Commission, which also oversees the Department of Banking and the Savings and Loan Department.

W.D. Hilton, Jr., Chair (Greenville)

Vernon Bryant, Jr. (Weatherford)

Jacqueline G. Humphrey (Amarillo)

Deborah H. Kovacevich (Jewett)

Marlene Martin (San Antonio)

Manuel J. Mehos (Houston)

Victor (Buddy) Puente, Jr. (Pantego)

John Snider (Center)

Robert V. Wingo (El Paso)

Agency Head

Leslie Pettijohn, Commissioner, (512) 936-7636

Recommendations

- Continue the Office of Consumer Credit Commissioner for 12 Years.
- Define a Sale-Leaseback Transaction as a Loan in Statute, to Be Regulated by OCCC; and Clarify in Law OCCC's Current Regulatory Authority Over Pay Day Loans.
- Increase OCCC's Authority Over the Financing Activities of Car Dealers and Third Party Contract Holders From Registration to Licensure, and Provide for Periodic On-Site Inspections.
- Require Consumer Loan Contracts to be Written in Plain Language and Style That Can Be Understood Easily by the Typical Consumer.
- Repeal the Set License Fees for Regulated Lenders and Pawnshops and Authorize the Finance Commission to Base Fees on the Licensee's Loan Volume.

Issue 1

Texas Has a Continuing Need for the Office of Consumer Credit Commissioner.

Key Findings

- Texas has a continuing interest in regulating credit transactions to ensure a healthy, but fair credit environment.
- OCCC has generally accomplished its mission of protecting consumers through effective regulation and enforcement.

The Office of Consumer Credit Commissioner performs an important mission, to regulate the credit industry and educate consumers and creditors to produce a fair, lawful, and healthy credit environment for Texas. While changes in the Finance Code could improve the agency's operations, the State has benefitted from its enforcement programs and no other federal or state agency has the means to provide these functions.

The Sunset review evaluated the continuing need for an independent agency to enforce Texas Credit Laws. The review assessed whether OCCC's functions could be successfully transferred to another agency and looked at how other states provide for this function. The review concluded that OCCC should be continued as an independent agency for 12 years.

Consumers have benefitted from OCCC's enforcement programs.

Recommendation

Change in Statute

1.1 Continue the Office of Consumer Credit Commissioner for 12 years.

This recommendation continues OCCC for the standard 12-year period until 2013.

Issue 2

Certain Lenders in Texas are Evading State Credit Laws and Regulation by Redefining Loan Transactions.

Key Findings

- Small consumer loans, including sale-leaseback transactions and pay day loans, are a fast growing segment of the financial services market.
- OCCC has authority to regulate loans, but sale-leaseback operations that redefine their loan products may evade regulation.
- The Finance Commission adopted rules for OCCC on pay day loans, but the agency may still face challenges to its authority in this area.

The lack of consumer protection for pay day loans, in particular, has caused concern nationwide.

In recent years, different types of lending businesses have attempted to evade regulation by using terms other than “loan” and “interest.” Sale-leaseback and pay day loans are two of these types of transactions which have very high interest rates, and cause many problems for consumers. The lack of consumer protection for pay day loans, in particular, has caused concern nationwide.

While these types of small consumer loans are products that many Texas consumers may want and need, increased regulation would help ensure better consumer protection. Recommended changes would also help control unlawful interest rates and ensure that important consumer protections, such as the federal Truth in Lending law, are upheld.

Recommendation

Change in Statute

2.1 Define a sale-leaseback transaction as a loan in statute, to be regulated by OCCC.

This recommendation would regulate sale-leaseback operations under the Texas Finance Code Subchapter F usury limits. Regulation would involve licensure and examination of these businesses, and requirements would be similar to other consumer lenders that OCCC currently oversees.

This recommendation mirrors that of the Texas Senate Committee on Economic Development Subcommittee on Consumer Credit Laws. More specifically, the Subcommittee suggests defining a sale-leaseback transaction in law as “an agreement to defer the payment of a debt and an absolute obligation to repay a debt.” This or similar language would help ensure that these transactions are clearly considered a loan and, as such, subject to regulation by OCCC.

2.2 Clarify in law OCCC’s current regulatory authority over pay day loans.

This change would specifically define OCCC's authority in law. OCCC should continue to regulate pay day lenders under Subchapter F of the Texas Finance Code, with its current rules as guidelines to the industry on what is required.

2.3 Prohibit all forms of subterfuge to avoid the application of state usury laws.

This recommendation would go beyond sale-leaseback and pay day loans to more broadly prohibit any type of subterfuge to avoid usury laws.

Issue 3

Authority to Regulate the Financing Activities of Car Dealers Does Not Adequately Address Complaints.

Key Findings

- Car dealers in Texas are licensed by Texas Department of Transportation, but must also register with OCCC if they finance the sale of vehicles.
- OCCC's current authority to simply register car dealers and third-party contract holders is inadequate to address the significant number of complaints regarding car dealer financing activities.
- Many other states have stronger regulation of car dealer financing activities than Texas.

Consumers encounter many problems with the financing activities of car dealers in Texas. Problems also exist with third-party holders, who buy contracts from car dealers and then handle the financing with consumers. However, the agency's limited registration program is inadequate to address these problems effectively. Increasing OCCC's authority over car dealer financing, to include licensure and on-site inspections, would enable OCCC to better protect consumers and ensure car dealers' compliance with credit laws.

Increasing OCCC's authority over car dealer financing would enable OCCC to better protect consumers and ensure car dealers' compliance with credit laws.

Recommendation

Change in Statute

3.1 Increase OCCC's authority over car financing, and add periodic on-site inspections.

This recommendation would increase OCCC authority over the car financing activities of car dealers and third-party contract holders. This would include inspections, restitution to consumers for violations of the Finance Code, and administrative penalties. Inspections of financing operations would be conducted on a four-year cycle or as needed to ensure compliance. Inspection would include the review of contracts to ensure that car dealers are complying with credit laws.

3.2 Authorize licensure fees in place of the current registration fees for car dealers and third-party holders, and allow the Finance Commission to set reasonable fees to cover the costs of regulation.

The Finance Commission should set fees in rule that are reasonable and necessary to recover the overall costs of the licensure and inspection of car dealers and third party contract holders. The license and inspection fees for car dealers should be based on an assessment methodology.

3.3 Authorize OCCC to share information on car dealer licensing and enforcement with TxDOT.

OCCC would share any information necessary to ensure consistent enforcement, and to decrease the regulatory burden on the industry. Information shared between the agencies would remain confidential.

Issue 4

The Consumer Credit Commissioner Cannot Require Lenders to Use Plain Language on Credit Contracts.

Key Findings

- Loan contract information is often confusing and difficult for consumers to understand.
- Difficult-to-read loan contracts put consumers at risk of making poor financial choices.
- Other state regulatory statutes require consumer contracts to be written in plain language and federal loan contracts have been re-written into plain language.
- Some private lenders and a federal agency have simplified loan contracts by rewriting them in plain language.

Many consumers are not able to understand or read their loan contracts because the contracts are complex, long, and written in legal language.

In recent years, some private lenders and governmental agencies have tried to simplify their contracts by rewriting them into plain language.

One common complaint received by the Consumer Credit Commissioner is that consumers often are forced to unnecessarily purchase credit insurance because they did not understand the terms of their contract. In recent years, some private lenders and governmental agencies have tried to simplify their contracts by rewriting them into plain language.

Giving the Commissioner a role in creating easy-to-read loan contracts would enable consumers to make better informed decisions and reduce confusion and complaints.

Recommendation

Change in Statute

4.1 Require consumer loan contracts to be written in plain language and style that can be understood easily by the typical consumer.

Contracts should be printed in a type style that is large enough to be read easily. These requirements should apply to contracts in English and in Spanish.

4.2 Require the Finance Commission to adopt rules governing consumer loan contracts, including model contracts written in plain language.

For the convenience of lenders, the Finance Commission would establish model contracts in rule and would post the contracts on its Web site.

4.3 Require the Consumer Credit Commissioner to review the readability of non-standard contracts.

The Office of Consumer Credit Commissioner would review the contracts of lenders who choose not to use the model contracts. Lenders under review would be able to use unreviewed contracts without penalty. In addition, the successful review of a contract for readability by the Consumer Credit Commissioner should not be viewed as an endorsement of the contract by OCCC.

Issue 5

OCCC's Licensing Fees are Outdated, and the Method of Fee Collection Is Inefficient.

Key Findings

- Regulated lenders and pawnshops licensed by the Office of Consumer Credit Commissioner pay licensing and examination fees to offset the costs of regulation.
- Annual license fees are fixed in law and, except for a small increase in pawnshop fees, have not changed in almost 30 years.
- Hourly billing for the costs of examinations is cumbersome for the agency, and makes it difficult for licensees to predict and budget their costs.
- Other financial regulatory agencies in Texas, and other states, have adopted fee systems based on assets or loan volume size as a more predictable way to cover regulatory costs.

Having license fees fixed in statute limits both OCCC's and the Legislature's ability to make adjustments in these fees when necessary. Problems were also noted in the way the agency recovers its costs through fees. Under the following recommendations, instead of a separate license and variable examination fee, licensees would pay a fee based primarily on their loan volume. This change should result in more predictable regulatory costs. The fee schedule would allow companies to anticipate their exact cash flow needs and better plan their budgets. Further, OCCC would be able to stabilize revenue collection and better recover the overall costs of regulation.

Recommendation

Change in Statute _____

5.1 Repeal the set license fees for regulated lenders and pawnshops, and the process for recovering examination costs; and authorize the Finance Commission to set license fees by rule.

The Finance Commission would be authorized to set the fees at rates necessary to recover costs and meet the agency's budget requirements set by the Legislature.

5.2 Authorize the Finance Commission to base fees on the licensee's loan volume, in amounts reasonable and necessary to recover the overall costs of both licensing and examinations.

OCCC should develop an assessment methodology that combines license and examination fees and allows regulated lenders and pawnshops to pay one up-front fee per year. All fees would continue to go directly into the General Revenue Fund.

Fiscal Implication Summary

One recommendation on the Office of Consumer Credit Commissioner would add seven FTEs to the agency, but would have no net fiscal impact to the State. This fiscal impact is discussed below, followed by a five-year summary chart.

Issue 3 Increased regulation of car dealer and third-party contract holder financing and the addition of seven FTEs at OCCC would have no net fiscal impact to the State because the costs of regulation would be covered by fees charged to car dealers. Those costs are estimated at \$840,000.

Fiscal Year	Gains to the General Revenue Fund	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$840,000	\$840,000	+7
2003	\$840,000	\$840,000	+7
2004	\$840,000	\$840,000	+7
2005	\$840,000	\$840,000	+7
2006	\$840,000	\$840,000	+7

Texas Department of Economic Development



Agency at a Glance

The Texas Department of Economic Development (TDED) helps develop and promote the Texas economy by:

- funding job training for Texas businesses;
- promoting Texas as a tourist destination;
- providing financial, location, and export assistance to Texas businesses and communities; and
- serving as a source of economic development information.

Key Facts

- **Funding.** TDED's budget for fiscal year 2000 was just over \$43 million. Approximately 71 percent of the agency's revenue comes from the Smart Jobs Fund (\$11.7 million) and the hotel/motel occupancy tax for tourism (\$18.7 million). The remaining 29 percent comes from state general revenue (\$5.2 million), federal funds (\$4.5 million), and other sources of revenue (\$2.9 million).
- **Staffing.** TDED employs 178 FTEs - all in the agency's Austin headquarters.
- **Smart Jobs.** TDED administers the Smart Jobs program that awards grants to Texas employers for customized training to promote the creation of new jobs and increase the wages of existing employees receiving training. Funding for Smart Jobs grants has grown from \$7.7 million in the 1994-1995 biennium to \$108 million in the 2000-2001 biennium.
- **Tourism.** TDED advertises and markets Texas as a top tourist destination, both domestically and internationally (\$18.7 million in fiscal year 2000).
- **Financial Assistance.** TDED assists Texas businesses and communities in accessing capital for business expansion and growth through a variety of programs, including the Texas Capital Fund, Capital Access Fund, and Texas Enterprise Zones.
- **Corporate Expansion and Recruitment.** TDED disseminates business location prospect leads to Texas communities, responds to inquiries about the Texas business climate, and coordinates site visits for businesses interested in moving to Texas.

Board Members (9)

Mark Langdale, Chair (Dallas)

Tucker S. Bridwell, Vice Chair (Abilene)

Javier Garza (Laredo)

Patricia Holland-Branch (El Paso)



Limas Jefferson (Seabrook)
George T. Richardson (Littlefield)
Marion Szurek (San Angelo)
Rance G. Sweeten (McAllen)
Martha J. Wong (Houston)

Agency Head

Jeff Moseley, Executive Director, (512) 936-0101

Recommendations

- Continue TDED for a Two-Year “Probationary” Period to Ensure That Needed Changes Have Been Implemented.
- Transfer Authority to Administer the Smart Jobs Program from TDED to the Texas Workforce Commission.
- Create a Tourism Coordinating Council to Coordinate Tourism Functions of All Agencies Involved in Tourism-Related Activities.
- Require the Tourism Division to Direct More of Its Resources Towards Meeting Tourism Development Needs.
- Require the Department to Provide Travel Information on Its Web Site in Spanish and Various Other Languages.
- Require the Department’s Advisory Committees to Meet Standard Structure and Operating Criteria.
- Abolish the Economic Development Corporation and Require the Department to Adopt Policies and Procedures for the Use of Funds Held Outside the Treasury.
- Increase the Department’s Emphasis on the International Arena.
- Direct the Department to Become Pro-Active in Bringing Business to Rural Texas.
- Direct the Department to Teach Rural Communities How to Plan For and Use State Resources.
- Have the Department Designate Regional Representatives Trained on All of the Department’s Programs.

Issue 1

The Department Has Yet to Succeed as an Effectively Run State Agency.

Key Findings

- The Board and Executive Management have not developed and implemented a clear focus and direction for the agency.
- The Board does not have the necessary information and has not taken an active enough role in overseeing the Department.
- The Department has no system for gathering the critical information necessary to effectively oversee agency operations.
- The Department has not effectively corrected problems raised in previous audits.
- Initial corrective steps recently taken by the Department do not provide enough assurance that the problems will be corrected.
- While most economic development in Texas happens at the local level, the State needs to maintain a limited role in economic development.

The Board and Executive Management have yet to adequately manage the agency. The Department does not have a clear direction or focus, and instead has taken an ad-hoc approach to carrying out its statutory duties. In addition, the Board has not set clear policies or taken an active enough role in overseeing the Department. Finally, the Department cannot provide the basic management information necessary to effectively oversee the agency.

Although the agency has a relatively new Executive Director, many of these problems have been occurring since the agency was restructured in 1997. The Sunset review concluded that even though initial corrective steps have recently been taken, they do not provide enough assurance that the problems identified will be corrected. Both the Board and Executive Management have not corrected ongoing problems, most significantly contracting and oversight problems, which ultimately resulted in the State Auditor's finding of gross fiscal mismanagement in the Smart Jobs Program.

Recommendation

Change in Statute

1.1 Continue the Department for a two-year “probationary” period, and require the Sunset Commission to re-evaluate the agency and its efforts, to ensure that needed changes have been implemented before the legislative session in 2003.

The following criteria should be used to decide whether TDED has successfully implemented the proper management and oversight controls of the State’s economic development efforts.

The Department should continue for a two-year “probationary” period.

- Effective development and implementation of a Strategic Plan and action plan that:
 - ensure a clear focus and direction for the agency, including a proper needs assessment that incorporates input from local economic development entities;
 - focus activities based on the policy directives of the Board;
 - detail the methodology of how the Department plans to implement the strategies in the Strategic Plan; and
 - explain how individual division actions contribute to the Department’s desired results.
- Establishment of subcommittees relating to the key administrative and programmatic functions of the Department to allow Board members to develop the expertise necessary to make informed decisions about and ensure accountability of the Department and its programs.
- Establishment of effective, agency-wide contracting standards and methodologies.
- Effective development and implementation of consistent, agency-wide policies, procedures, and controls over day-to-day operations including budgeting, contracting, and travel; and a centralized information and accounting system that will provide single management reports for key areas so that management can determine a true financial position of the agency.
- Effective use of the Department’s internal audit function that ensures management responses to internal audit reports are actually implemented.

The Department should be required to update the Sunset Commission on any progress that has been made to address these recommendations in December 2000, prior to the 77th legislative session. The Department should also be required to report to the Sunset Commission by September 1, 2002, on the status of these recommendations as part of the re-evaluation of the agency during the next interim.

1.2 Maintain the nine-member Board to obtain the necessary geographic, ethnic, and gender diversity, but remove the designated representation requirements so that the members are public members.

Board appointments would no longer have to meet the specified representation requirements of a member with experience in tourism, a member with experience in international trade, a member who is an economic development practitioner, and a member who is a resident of a county with a population of less than 30,000. Board members would be able to get the necessary program-specific expertise through advisory committees, which could be appointed as warranted.

Issue 2

Administration of the Smart Jobs Program Raises Doubts as to TDED's Ability to Manage This Important Job Training Program.

Key Findings

- In January 2000, the State Auditor's Office cited TDED for gross fiscal mismanagement of the Smart Jobs Program.
- TDED's administration could have jeopardized the State's Unemployment Insurance Compensation Fund balance.
- TDED was aware of problems in the Smart Jobs Program as early as 1997, but did not ensure that corrective action was taken.

The State Auditor's Office found serious problems across all elements of TDED's administration of the Smart Jobs Program. TDED was unable to determine whether Smart Job grant recipients actually trained their employees or how much money was spent in training. Failure to monitor the Smart Jobs Fund (Fund) balance exposed State assets to potential fraud and abuse, and had the potential to cause an increase in the

State's unemployment insurance tax. TDED has been aware of some of these problems since 1997, but only began to take serious action in December 1999, during the SAO audit of the Smart Jobs Program.

Transferring the Smart Jobs Program to the Texas Workforce Commission would provide a more stable environment for the effective administration of this key job training program. Transferring the Program would also increase coordination with other workforce development efforts and give businesses one agency to contact to access all of the State's job training programs. This transfer would not result in any programmatic changes to the Smart Jobs Program itself. Funding for Smart Jobs grants would continue to flow directly to individual employers, and the Program's focus would remain on helping businesses provide customized training for their employees. In addition, placing statutory requirements for more clearly defined contracts and risk-based monitoring should help ensure better administration and accountability of this Program.

Transfer of the Smart Jobs Program to the Texas Workforce Commission would provide more stability for the program.

Recommendation

Change in Statute

2.1 Transfer authority to administer the Smart Jobs Program from TDED to the Texas Workforce Commission.

This transfer would not result in any programmatic changes to the Smart Jobs Program itself. This recommendation would eliminate the fragmentation of the State's job training programs that currently exists between TDED and TWC.

2.2 Require the Smart Jobs Program to include more clearly defined contract provisions.

This recommendation would require all contracts to have the following standard provisions:

- clearly defined goals, outputs, and measurable outcomes that directly relate to Program objectives;
- clearly defined sanctions or penalties for non-compliance with contract terms and conditions; and
- clearly specified accounting, reporting, and auditing requirements for funds received under Smart Jobs contracts.

2.3 Require the Smart Jobs Program to include risk-based contract monitoring practices.

This recommendation would require the following monitoring approach:

- a risk-assessment to determine which contracts have the highest risk for fraud and abuse; and
- a method to obtain and evaluate program cost information to ensure all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

These recommendations would establish a statutory performance-based contracting system for the Smart Jobs Program that will evaluate grant recipients on performance. Such a system would help to address the concerns identified by the State Auditor’s Office in it’s audit of the Program. In addition, these provisions would help to ensure that state funds are used wisely and effectively, while helping to provide training for the Texas workforce.

Management Action _____

2.4 TDED and TWC should formulate a transition plan for the transfer of the Smart Jobs Program.

This recommendation would help ensure that the transfer of the Smart Jobs Program is in accordance with state law and has minimal effect on the Program’s functions. The transition plan should include a timetable with specific steps and deadlines, a method for transfer of all Program records to TWC, assurance that TDED will continue to make employers aware of the Program and refer future inquiries about Smart Jobs to TWC, and other steps necessary to complete the transfer of the Program.

A percentage of Smart Jobs funds should be used as an incentive in attracting business to Texas.

Change in Statute _____

2.5 Designate a percentage of Smart Jobs funds for use by TDED as an incentive in attracting business for economic development purposes.

The percentage of Smart Jobs funds to be used by TDED as an incentive would be set by appropriations rider. TDED would make decisions on how the incentive funds would be allocated and the Texas Workforce Commission would administer the job training contracts as part of the Smart Jobs Program.

Issue 3

Fragmentation of the State’s Tourism Functions Results in Duplication, Poor Customer Service, and an Inconsistent Marketing Effort.

Key Findings

- The State lacks a consistent and unified tourism marketing effort across the 11 different state entities involved in tourism.
- The Legislature has repeatedly mandated the key agencies involved in tourism to coordinate their efforts, but the agencies have failed to comply in an effective manner.

Creating the Tourism Coordinating Council would help ensure a consistent marketing effort across the 11 agencies involved in or affected by tourism activities. This recommendation should help accomplish long-standing legislative efforts to achieve a coordinated approach to tourism promotion in Texas.

Recommendation

Change in Statute _____

3.1 Create a Tourism Coordinating Council in statute to coordinate tourism functions of all agencies involved in tourism-related activities.

Creating a Tourism Coordinating Council would help coordinate all state agency tourism functions.

This new Council would replace the existing State Agency Tourism Council that currently includes TDED; TxDOT; TPWD; TCA; THC; Texas General Land Office; Texas Department of Public Safety; Texas Department of Agriculture; Texas A & M University; and the Office of Music, Film, Television and Multimedia. By law, all of the agencies would continue to be represented on the new Tourism Coordinating Council. Given its increasing role in tourism, the State Preservation Board should also be represented on the Council.

The Council would designate a presiding officer and would be administratively attached to TDED. The Council would analyze tourism functions, identify and address tourism coordination problems, ensure that agencies comply with required MOUs, and implement a coordinated marketing plan. The Council would also be required to determine the state resources dedicated to and the outcomes of the various types of tourism including recreational, cultural, historical, and nature. The Council would be required to report its findings to the Legislature biennially.

Issue 4

The Department Is Not Meeting the Tourism Development Needs of Texas Communities.

Key Finding

- The Department has reduced resources and services for tourism development programs, even though a clear need for these services exists.

Tourism development is a critical part of state tourism. While the State expends many resources to encourage people to come to Texas, it must also help develop the product within the state so that tourists have positive experiences when they visit. Currently, the need for tourism development services is greater than the amount of services being provided. This recommendation would require the Department to direct its resources to more adequately address tourism development needs in Texas communities. Improving tourism development will help stimulate travel and bring additional tourism revenue to more communities throughout the state.

Communities need
more tourism
resources directed
towards meeting
tourism
development.

Recommendation

Management Action

4.1 Require the Tourism Division to direct more of its resources towards meeting tourism development needs.

The Division should assess its resources and develop an action plan for allocating more of its resources to meet tourism development needs. The Tourism Development Section could do this by increasing the number of workshops and assessments to communities most in need, including rural and border communities.

Issue 5

The Department Does Not Provide Travel Information on Its Web Site in Other Languages.

Key Findings

- Texas is failing to reach a large portion of international travelers by not providing tourism information on its Web site, in other languages.
- Other states, and other state agencies in Texas, have recognized the value of providing Web site information in other languages.

TDED's travel Web site is one of the primary tools Texas uses to promote the state both nationally and internationally. Despite the fact that 75

The Department could reach more travelers by providing travel information in other languages.

percent of international travelers to Texas are Spanish-speaking, the Web site is only available in English. Requiring the tourism Web site to include information in Spanish and other languages would improve access to travel information to stimulate travel and increase tourism revenue for Texas. The recommendation would also help Texas remain competitive with other states that provide tourism information in different languages.

Recommendation

Management Action

5.1 Require the Department to provide travel information on the TravelTex.com Web site in Spanish and various other languages that reflect the Department's top tourism markets.

This recommendation could be phased in initially by posting existing printed brochures and publications in Spanish and other languages, and later added to the Web site contract as it is renewed or rebid.

Issue 6

The Structure and Use of the Department's Advisory Committees Is Inappropriate and, in Some Cases, Unnecessary.

Key Findings

- Having Board members serve on agency advisory committees is inappropriate.
- Using advisory committees to develop and direct agency policy and operations limits public participation and potentially violates the Open Meetings Act.

These recommendations are intended to ensure the most effective structure and use of the Department's advisory committees. Having Board members serve on advisory committees that develop policy and direct agency operations, as they do at TDED, is not an appropriate or effective advisory committee structure. Advisory committees should be used as independent, external sources of information to inform the Board or the Department. Advisory committees should not develop agency policy or direct agency operations, particularly if done in closed meetings and without adequate public input. Restructuring the

Department’s advisory committees will allow the Department’s Board and staff to access a more meaningful source of external information and expertise for its planning and program implementation.

Recommendation

Change in Statute

6.1 Require the Department’s advisory committees to meet standard structure and operating criteria.

All advisory committees must:

- provide independent, external expertise on Department functions;
- not be involved in setting agency policy or managing the Department’s actual operations; and
- not include Board members as members of the committee.

This recommendation would ensure that the Department’s advisory committees are structured and used to advise the Department and Board, and not involved in setting of policy or managing the actual operations of the agency. In addition, this recommendation would prohibit Board members from serving on the Department’s advisory committees which will allow the committees to actually serve in an advisory capacity.

6.2 Limit the authority of the Texas Strategic Military Planning Commission.

This recommendation specifies that the Texas Strategic Military Planning Commission does not have authority to review personnel matters nor to negotiate real estate matters as defined by the Open Meetings Act.

Advisory committees should not be involved in setting policy or managing agency operations.

Issue 7

The Department’s Methods of Collecting and Using Private Funds Are Duplicative and Do Not Ensure Accountability.

Key Findings

- The Department does not have adequate controls in place to ensure accountability over the use of private funds and the use of staff time in acquiring private funds.

TDED should establish guidelines for the use of funds held outside the Treasury.

- Lack of controls over activities and funds held outside of the Treasury can create the appearance of impropriety.
- Since the Department can directly raise and expend private funds on its own, a separate state-sanctioned corporation to perform the same functions is unnecessary.

These recommendations would help ensure clear accountability over the Department's assets and resources to avoid even the appearance of improper use of both State and private funds. The Sunset review found that the Department is not providing adequate accountability of the private funds it collects and needs to establish guidelines to ensure that funds are properly accounted for and appropriately used. The review also found that maintaining a private corporation for acquiring and expending private funds for the Department is unnecessary because the Department currently has the statutory authority to do this without the use of a private corporation.

Recommendation

Change in Statute _____

7.1 Require the Department's Governing Board to adopt, by rule, policies and procedures for the use of Department funds held outside of the Treasury.

This recommendation would require the Board to establish guidelines for use of funds held outside of the Treasury to ensure that the funds are properly accounted for and appropriately used. These guidelines should include a requirement that the Department account for all General Revenue funds contributed to projects supported by funds held outside of the Treasury, and that the Department be fully reimbursed for those contributions as funds become available. Also, the Department would be required to account for all staff time spent on fund-raising activities associated with private donations. The Board should adopt these guidelines by formal rule as soon as possible, but not later than December 1, 2001.

7.2 Abolish the Texas Economic Development Corporation.

This would eliminate the separate state-sanctioned non-profit corporation to raise funds for the Department. The Department could continue to receive donations and contributions under its general authority and use these funds in the same manner as those raised by the Corporation.

Issue 8

Improve the Department's Role in International Business.

International business is a critical part of state economic development. While the State expends many resources to encourage businesses to come to Texas, it must also help develop international relationships to assist Texas companies in promoting their products and services internationally. This recommendation directs the Department to increase emphasis on its international business role by improving the interface between Texas companies and foreign governments. Improving international business will help stimulate economic development throughout the state.

Recommendation

Management Action

8.1 Direct the Department to increase emphasis on the international arena.

The Department, in conjunction with the Secretary of State, should increase emphasis on the international arena and the improvement of the protocol/information functions to assist American companies in interfacing with foreign governments, and foreign governments interfacing with Texas companies.

The Department should assist companies in interfacing with foreign governments.

Issue 9

Strengthen the Department's Efforts in Bringing Business to Rural Texas.

The Department is statutorily required to establish and maintain an Office of Rural Affairs and to focus its business development efforts on rural areas. Currently, the key activities of the Office include keeping rural areas informed of relevant economic development issues, opportunities, and services.

The Department should be more pro-active in bringing business to rural Texas.

Recommendation

Management Action

9.1 Direct the Department to become more pro-active in bringing business to rural Texas.

The Department should work to pro-actively bring business to rural Texas. In doing so, the Department should help to change the image of rural Texas by showing businesses that rural Texas is a place for all business, including new technologies.

Issue 10

Improve the Planning For and Use Of State Resources In Rural Communities.

The Department of Economic Development's rural community development includes keeping these communities informed about the state resources that are available to them. Although communities may know about these resources, they may not know how to maximize them or have a plan to use these resources.

Recommendation

Management Action

10.1 Direct the Department to teach rural communities how to plan for and use state resources.

The Department should teach rural communities how to do community-based planning, including how to match their needs with state resources. Communities should be responsible for maximizing the impact of these resources as well.

Issue 11

Improve the Department's Regional Representation.

Currently, the Department does not have regional staff representation. Instead of having regional representatives trained on all of the Department's programs and resources, agency staff from each Division must travel throughout the state informing each area about individual programs and resources.

Recommendation

Management Action

11.1 Have the Department designate regional representatives trained on all of the Department's programs.

This recommendation directs TDED to designate regional representatives to inform the entire state about all of the Department's programs and resources. The regional representatives would be trained to provide the necessary information on all of the Department's programs to the entire state.

Regional
representatives
should provide
information on all of
the Department's
programs.

Fiscal Implication Summary

Two recommendations regarding the Texas Department of Economic Development would have a fiscal impact to the State. They are discussed below, followed by a five-year summary chart.

- Issue 2 Transferring the Smart Jobs Program to the Texas Workforce Commission would result in a savings of approximately \$96,000 per year from administrative efficiencies, including the reduction of 2.5 FTEs.
- Issue 7 Abolishing the Texas Economic Development Corporation would save \$13,535 annually in administration costs.

Fiscal Year	Savings to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$109,535	-2.5
2003	\$109,535	-2.5
2004	\$109,535	-2.5
2005	\$109,535	-2.5
2006	\$109,535	-2.5

Texas Energy Coordination Council



Council at a Glance

The Texas Energy Coordination Council (Council) provides policy research, and information, on energy production and use in Texas by:

- assisting legislative committees with specific charges by conducting research and issuing reports;
- providing start-up funding for public-private collaborations to develop and promote energy conservation, and to develop new technologies;
- pursuing grant funding for research projects on renewable energies, energy efficient technologies, and industrial practices; and
- participating in, and conducting meetings on energy issues involving the U.S. Department of Energy, state agencies, universities, and private industry.

Key Facts

- **Funding.** The Council is funded by federally administered Oil Overcharge settlement dollars, and spent approximately \$340,000 in fiscal year 2000.
- **Staffing.** The Council is served by a staff of three including the Executive Director, a web developer, and one administrative staff.
- **Location.** Council staff are located at the University of Texas at Austin, J.J. Pickle Research Center.

Council Members (12)

- Donald W. Niemiec, Chair (Fort Worth)
- Dr. Dan Turner, Vice Chair, ex officio (College Station)
- Glenda Callaway (Houston)
- Jo Ann Mudgett (Pinehurst)
- Charles Patton (Austin)
- James A. Tramuto (Houston)
- Douglas P. Whipple (Freeport)
- Dr. David Allen, ex officio (Austin)
- Dr. Glenn Aumann, ex officio (Houston)
- Dr. Vaughn Nelson, ex officio (Canyon)
- Dr. Walt Oelr, ex officio (Lubbock)
- Vacant, Renewable Energy Industry

Agency Head

Jerry Matthews, Ph.D., Executive Director, (512) 475-6774

Issue 1

Texas Does Not Need the Texas Energy Coordination Council.

Recommendation

Change in Statute _____

1.1 Abolish the Texas Energy Coordination Council.

By not taking action to continue the Texas Energy Coordination Council, the Sunset Commission's recommendation is to abolish the Council. As a result, the Council is abolished on September 1, 2001 under the Texas Sunset Act. No legislation would be needed to accomplish this abolishment. Under the Texas Sunset Act, the agency may continue in existence until September 1, 2002 to conclude its business.

Fiscal Implication Summary _____

This recommendation would not have a fiscal impact to the State, but would eliminate the need to make future appropriations to the Council.

Finance Commission of Texas



Agency at a Glance

The Finance Commission of Texas oversees the Texas Department of Banking, the Savings and Loan Department, and the Office of Consumer Credit Commissioner. The mission of the Finance Commission is to ensure that banks, savings institutions, consumer creditors, and other businesses or persons chartered or licensed by the State operate as sound and responsible institutions that enhance the financial well-being of Texas. To achieve its purpose, the Finance Commission:

- selects a Commissioner to run each of the three financial regulatory agencies it oversees;
- adopts rules relating to the industries overseen by the three agencies; and
- employs an administrative law judge to hear cases brought before each of the three Departments.

Key Facts

- **Funding.** The Finance Commission's total expenditures for fiscal year 2000 were \$198,000. The Finance Commission is funded primarily from General Revenue appropriations.
- **Staffing.** The Finance Commission has 1.5 budgeted full-time equivalent employees. One employee is the administrative law judge and the part-time employee is the Banking Commissioner who serves as the Finance Commission's Executive Director.
- **Research Reports.** The Legislature has required the Finance Commission to conduct research on the availability, quality, and pricing of financial services in Texas. To complete these reports, the Finance Commission contracts with private researchers and has broken the topic into smaller projects to be completed over a number of years.

Commission Members (9)

W.D. Hilton, Jr., Chair (Greenville)

Vernon Bryant, Jr. (Weatherford)

Jacqueline G. Humphrey (Amarillo)

Deborah H. Kovacevich (Jewett)

Marlene Martin (San Antonio)

Manuel J. Mehos (Houston)

Victor (Buddy) Puente, Jr. (Pantego)

John Snider (Center)

Robert V. Wingo (El Paso)

Finance Commission of Texas



Agency Head

Randall James, Banking Commissioner, (512) 475-1325

Recommendations

- Continue the Finance Commission With Changes to Its Composition, Authority, and Status as an Independent Agency.
- Ensure Clear Means for Consumers to File Complaints, Particularly with Regards to Privacy, with the Departments of Banking and Savings and Loan.
- Create a Formal Process for Monitoring the Overall Health of the Texas Banking System.

Issue 1

The Finance Commission Should Be Continued With Changes to Its Composition, Authority, and Status as an Independent Agency.

Composition of the Finance Commission does not fully reflect the industries overseen.

Key Findings

- The composition of the Finance Commission does not reflect an appropriate balance of the financial activities it regulates.
- State law does not clearly define the Finance Commission's broad role in overseeing and coordinating financial services and ensuring the protection of the interests of Texas consumers.
- The split of rulemaking authority between the Finance Commission and the individual Commissioners reduces its ability to fully oversee the financial regulatory agencies.
- The Finance Commission's role as an independent agency is duplicative, confusing, and unnecessary.

The Finance Commission oversees three separate financial regulatory agencies – the Department of Banking, the Savings and Loan Department, and the Office of Consumer Credit Commissioner. However, the composition of the Finance Commission does not fully reflect the industries overseen by these three agencies, particularly in regard to the consumer credit and mortgage broker industries. The Finance Commission's limited authority and the independence of its three Commissioners impedes effective coordination of financial regulatory policies across agency lines. In addition, the Commission's role is clouded by its dual status as a policy body over three independent agencies and an agency of its own.

The Sunset review studied the mission, composition, and authority of the Finance Commission. The review concluded that the Finance Commission should be continued, but with changes to broaden its composition, clarify its mission, and eliminate its status as an independent agency.

Recommendation

Change in Statute

1.1 Continue the Finance Commission for 12 years.

This recommendation continues the Finance Commission for the standard 12-year period until 2013.

1.2 Change the composition of the Finance Commission to add representatives of the consumer credit and mortgage broker industries.

Under this recommendation, the Commission would be composed of:

- one member who represents the banking industry;
- one member who represents the thrift industry;
- one member who represents the consumer credit industry;
- one member who represents the mortgage broker industry; and
- five public members.

This recommendation would add one representative each from the consumer credit and the mortgage broker industries — establishing a balanced representation across the key industries overseen by the Commission. The Commission's size would remain at nine members with a majority of public members.

1.3 Clarify that the mission and role of the Finance Commission, in coordinating financial regulatory policies, is to protect consumers and ensure a strong depository and lending system in Texas.

This recommendation is intended to establish the Finance Commission's statutory role as both the umbrella policy body overseeing the three financial regulatory agencies, and direct it to take a broad view of Texas' financial services industry. The Finance Commission would serve as the single point of accountability for ensuring that Texas' depository and lending institutions function as a system. This coordination should focus on protecting consumers' interests, as well as maintaining a safe and sound banking system, as a means of increasing the economic prosperity of the state.

1.4 Vest all rulemaking authority of the three Commissioners in the Finance Commission.

This recommendation would ensure that the Finance Commission has the full ability to control the policy decisions of the three financial regulatory agencies. The current mix of responsibilities for rulemaking between the Commissioners and the Finance Commission would be eliminated in favor of a clear vesting of all rulemaking authority within the policy body.

1.5 Eliminate all statutory references to the Finance Commission as a separate state agency.

This recommendation would maintain the Commission as a policy body over the three financial regulatory agencies, but eliminate its current status as an independent state agency. It would also eliminate the need for a separate Executive Director position. Under this recommendation, the Finance Commission would continue to be responsible for hiring the Commissioners of the three financial regulatory agencies, and approving budgets and legislative appropriations submissions, but the Commission's responsibility for filing its own Legislative Appropriations Request would be rescinded. Responsibility for overseeing future studies of the availability of financial services could continue to be assigned by the Commission to one of the three agencies.

Issue 2

The Departments of Banking and Savings and Loan Offer Limited Avenues for Consumers to File Complaints, Particularly With Regard to Privacy.

Key Findings

- The Banking and Savings and Loan Departments offer limited avenues for consumers to file complaints about state-chartered banks and thrifts.
- The Finance Commission has no mechanism to monitor any potential abuses of consumers' privacy under changes authorized by Gramm-Leach-Bliley Act.

Unlike the Office of Consumer Credit Commissioner, the Department of Banking and the Savings and Loan Department do not have clear channels for consumer complaints. Although each agency has a consumer complaint function, information on how these functions may be reached is not readily available to consumers. The need for a clear avenue for filing a complaint may become more critical given recent changes in federal law that permit for greater sharing of consumer information among financial institutions.

The Sunset review identified ways for these agencies to improve their handling of consumer complaints, and to observe and document any impact the Gramm-Leach-Bliley Act may have on consumers' privacy.

Consumers need a clear avenue for filing complaints about banks and thrifts.

Recommendation

Change in Statute

2.1 Require the Finance Commission to develop formal rules to ensure that all entities regulated by the Department of Banking and Savings and Loan Department post information on how consumers may file a complaint.

Under this recommendation, the Finance Commission would determine, through rules, the most appropriate way to provide consumers with access information. This could include posting of a toll-free number in the place of business, or requiring that the information be provided to the consumers during transactions.

2.2 Require all privacy notices provided by financial institutions regulated by the Finance Commission agencies to include information on how consumers can file a complaint.

This recommendation would require all financial institutions regulated by the Department of Banking, Savings and Loan Department, and Office of Consumer Credit Commissioner to provide complaint contact information on the opt-out privacy notices that these institutions are required to post for the sharing of information. The industries affected by this recommendation include banks, thrifts, consumer lenders, check sellers, and currency exchange places. This recommendation would provide a mechanism for tracking the impact of the Gramm-Leach-Bliley Act's privacy provisions on Texas consumers.

Issue 3

The Departments of Banking and Savings and Loan Do Not Have a Formal Process for Predicting and Responding to an Economic Downturn or Other Industrywide Crises.

Key Findings

- The Departments of Banking and Savings and Loan do not have adequate forward-looking processes to predict future weaknesses in the Texas banking system.
- Other federal bank regulators have early warning procedures in place that are more prospective.

The Departments of Banking and Savings and Loan have no formal mechanism to review industrywide economic conditions and their effect on the financial institutions they regulate. The regulatory efforts of both agencies focus on safety and soundness, but more on a bank-by-bank basis, rather than a statewide or industrywide approach. Monitoring the overall condition of Texas' banking system would provide a mechanism for increased awareness and improved regulatory response to trends or changes, which can provide early warning signs of major financial changes. This would help Texas to possibly avert a financial disaster among Texas commercial banks and savings banks similar to the one experienced in the 1980s.

Recommendation

Change in Statute _____

- 3.1 Require the Department of Banking and Savings and Loan Department to monitor and report to the Finance Commission on the overall condition of Texas' banking system.**

This requirement would place joint responsibility with both Departments for the formal ongoing review of all available economic forecasts, both national and state, including an analysis of new legislation and changing banking practices. After considering all available information, the Departments would periodically report to the Finance Commission on the current and projected condition of the banking system.

Fiscal Implication Summary _____

Recommendations on the Finance Commission of Texas would have no fiscal impact to the State.

Texas lacks a formal
process for
monitoring the
overall health of its
banking system.

Office of Fire Fighters' Pension Commissioner



Agency at a Glance

The Office of Fire Fighters' Pension Commissioner helps secure the retirement plans of volunteer and paid firefighters, as well as voluntary emergency services personnel, by:

- helping paid and volunteer fire departments administer their local pension plans, including educating local trustees and administrators on how to run these plans; and
- administering a statewide pension plan for volunteer fire departments and emergency medical services (EMS) departments that are eligible and wish to join.

Key Facts

- **Funding.** For fiscal year 2000, the agency operated on an administrative budget of about \$825,000 in appropriated and non-appropriated funds. About \$111,000 (13 percent) comes from General Revenue for assistance to paid and volunteer firefighter pension systems. The remaining 87 percent, or \$259,000 in appropriated and \$455,000 in non-appropriated funds, comes from the investment income of the Statewide Emergency Services Personnel Retirement Fund.
- **Staffing.** In fiscal year 2000, the agency operated with a staff of 7.5 employees who assist local pension systems and administer the Statewide Fund. The agency also contracts with an actuary, investment consultant, custodial bank, certified public accountant, investment managers, and computer programmers.
- **Oversight.** The Fire Fighters' Pension Commissioner is appointed by the Governor to administer the affairs of the Office. A separate Board of Trustees is appointed by the Governor to oversee the Statewide Fund, with staff assistance from the Commissioner.
- **Assistance to Local Fire Fighter Pension Systems.** The agency offers assistance to 136 paid and volunteer fire departments with their own pension systems. In fiscal year 1999, these systems had assets of about \$829 million and included 6,700 active firefighters and 3,270 benefit recipients. The agency maintains these departments' personnel records, audits their annual reports, confirms and approves benefit amounts, and advises on the professional management of their pension systems.
- **Administration of a Statewide Pension System.** The agency operates a statewide pension system for about 154 volunteer fire and EMS departments not covered by other plans. The agency collects contributions, handles investments, and distributes

Office of Fire Fighters' Pension Commissioner



benefits for about 4,300 active volunteer firefighters and volunteer EMS personnel and about 2,000 benefit recipients. The system's assets totaled about \$30 million in fiscal year 1999.

Agency Head

Morris Sandefer, Commissioner, (512) 936-3473

Statewide Emergency Services Personnel Retirement Fund

Board of Trustees (9)

Joe Rice, Chair (Canyon)

Frank Torres, Vice Chair (Raymondville)

Paul Loeffler, Secretary (Alpine)

Tim Bogjisch (Seguin)

Kyle Donaldson (Sonora)

Landon McClain (El Campo)

Maxie Patterson (Houston)

Allen Scopel (Rosenberg)

Robert Weiss (Brenham)

Recommendations

- Continue the Office of Fire Fighters' Pension Commissioner for 10 Years.
- Provide for One Member of the Board of Trustees of the Texas Statewide Emergency Services Personnel Retirement Fund to Represent Emergency Medical Services.
- Change the Fire Fighters' Pension Commissioner's Term From Two to Four Years.

Issue 1

Texas Has a Continuing Need for the Fire Fighters' Pension Commissioner.

The Office of Fire Fighters' Pension Commissioner administers two separate programs. The Commissioner oversees the Texas Local Fire Fighters' Retirement Act (TLFFRA) by monitoring and assisting local firefighter pension systems by providing technical assistance and education, conducting appeals, and helping with records retention. In addition, the Commissioner and the Board of Trustees provide crucial oversight and guidance to the Statewide Emergency Services Personnel Retirement Fund, which provides pension, death, and disability benefits to volunteer firefighters in Texas.

Recommendation

Change in Statute

1.1 Continue the Office of Fire Fighters' Pension Commissioner for 10 years.

This recommendation would continue the Board as an independent agency until 2011.

Issue 2

The Composition of the Board of Trustees of the Texas Statewide Emergency Services Personnel Retirement Fund Does Not Ensure Representation of Emergency Medical Services Personnel.

The Texas Statewide Emergency Services Retirement Act provides for the Governor to appoint six trustees who are active fund members and three members who have experience in the fields of finance, securities, investment, or pension administration. The statewide fund offers pension coverage to both volunteer firefighters and volunteer emergency medical service (EMS) personnel. However, the Act does not require that the Board's trustees represent both occupations, even though both are eligible for fund membership and benefits.

Recommendation

Change in Statute _____

2.1 Change the composition of the Board of Trustees by designating one member to represent volunteer emergency medical service personnel.

This recommendation would require that one of the six active fund members on the Board of Trustees be designated to represent emergency medical services personnel. The EMS representative would not be precluded from being a firefighter in instances where the person serves as both a volunteer EMS worker and a volunteer firefighter. This recommendation would not change the size of the Board.

Issue 3

The Fire Fighters' Pension Commissioner's Term Does Not Match the Term of the Governor.

The Fire Fighters' Pension Commissioner is appointed by the Governor to a two-year term. Lengthening the Commissioner's term from two to four years would improve the link and accountability between the Commissioner and the Governor making the appointment.

Recommendation

Change in Statute _____

3.1 Change the term of the Fire Fighters' Pension Commissioner's from two to four years.

Because the State Constitution provides for Governor appointments to be for two years, this recommendation would require a constitutional amendment to change the terms of the Commissioner. This recommendation would require a joint resolution and approval by the state's voters to amend the State Constitution.

Fiscal Implication Summary _____

These recommendations would not have a fiscal impact to the State, other than the publication cost for the resolution proposing the constitutional amendment to change the Commissioner's term from two to four years.

Changing the Commissioner's term to four years would require a constitutional amendment, needing approval of the state's voters.

Texas Funeral Service Commission



Agency at a Glance

The Texas Funeral Service Commission attempts to ensure professional and ethical funerals by regulating funeral directors, embalmers, and funeral and commercial embalming establishments. Created in 1903 as the State Board of Embalming, the Commission has two statutory functions: licensing and enforcement. The Commission may impose sanctions, which include assessing administrative penalties ranging from \$100 to \$5,000; suspending, probating, or revoking licenses; or a combination of these sanctions.

Key Facts

- **Funding.** In fiscal year 2000, the Commission operated with an annual budget of \$512,175, including \$5,000 in appropriated receipts from the sale of Commission publications. The Commission received more than \$867,000 in licensing fees that year, which all went into General Revenue.
- **Staffing.** The Commission employs 10 people, all of whom work in Austin.
- **Licensees.** As of September 2000, the Commission licensed 4,358 individuals as funeral directors or embalmers. The majority of licensees are dually licensed as both an embalmer and a funeral director, although some people hold only a single license. In addition, the Commission licensed 1,327 establishments as funeral homes or commercial embalming establishments. A breakdown of these numbers was not available.
- **Complaints.** In fiscal year 2000, the Commission reviewed 355 complaints, clearing out a significant backlog from previous years. The 355 cases included 12 complaints received in fiscal year 1998, 180 received in fiscal year 1999, and 267 received in fiscal year 2000. The Commission closed 318 cases of the 355 cases reviewed, carrying forward only 37 cases into fiscal year 2001.
- **Investigations.** Of the 355 complaints reviewed in fiscal year 2000, the Commission fully investigated and dismissed 273 after finding no fault or no jurisdiction.
- **Sanctions.** In fiscal year 2000, the Commission ordered disciplinary action in 79 of the complaint cases, and assessed \$337,300 in administrative penalties in these cases. The Commission collected \$98,239 in administrative penalties, all of which was transferred to General Revenue. Two criminal charges were filed resulting in arrest, and the Commission made two requests for injunctive relief, such as cease-and-desist orders, through the Office of the Attorney General.



Commission Members (6)

Harry M. Whittington, Presiding Officer (Austin)

Frank W. Maresh, Asst. Presiding Officer (Hunt)

John Q. Taylor King, Ph.D. (Austin)

Martha J. Rhymes (White Oak)

Dorothy L. Grasty (Arlington)

Jim C. Wright (Wheeler)

Agency Head

O.C. "Chet" Robbins, Executive Director, (512) 936-2472

Recommendations

- Continue the Commission for a Two-Year "Probationary" Period to Ensure That Needed Changes Have Been Implemented.
- Require the Commission to Provide More Information to Consumers and Funeral Professionals.
- Require the Commission to More Effectively License, Inspect, and Investigate Complaints Against Funeral Directors and Embalmers.
- Improve the Commission's Complaint Process.
- Require the Commission to Adopt Guidelines for Imposing Sanctions and Fines.
- Expand Regulation to Include the Burial and Final Disposition of Bodies by Authorizing the Commission to Register and Sanction Owners and Operators of Cemeteries and Crematories.
- Expand the Commission from Six to Seven Members by Adding a Funeral Industry Representative.
- Authorize the Commission to Automatically Revoke a Funeral Industry License if the Licensee is Convicted of a Felony Related to the Funeral Industry.
- Include Ethics Training in the Continuing Education of Funeral Industry Professionals.
- Recommendations on Prepaid Funerals and Perpetual Care Cemeteries are Located in the Department of Banking Section of This Report.

Issue 1

The Commission Continues to Struggle and Needs Help to Succeed as an Effective State Agency.

Key Findings

- The Commission lacks a functioning computer system for managing its regulatory functions, despite more than five years of attempts and two failed systems.
- The Commission cannot provide critical information to the Legislature and other state agencies.
- Based on the agency's interpretation of its statute, the Commission may not appropriately sanction violations, and could be subject to potential lawsuits in addition to its current legal problems.
- The absence of other standard licensing procedures and safeguards also impedes the agency's ability to effectively regulate the funeral industry.
- Despite agency problems, Texas has a continuing need to regulate the funeral industry to protect consumers from potentially deceptive or unfair practices.
- While transferring the Commission's functions would offer certain administrative advantages, problems could also be addressed within the current structure.

The Commission's role in regulating funerals is needed to protect consumers from potentially deceptive or unfair practices. However, this agency has been plagued for years with serious problems in its approach to regulation, poor administration, and significant turnover in staff. Numerous problems are keeping the agency from effectively regulating the funeral industry and protecting consumers.

Without improved expertise and additional resources, the Commission cannot effectively protect consumers and regulate the industry.

Recommendation

Change in Statute

- 1.1 Continue the Commission for a two-year probationary period and require the Sunset Commission to re-evaluate the agency to ensure that needed changes have been implemented before the legislative session in 2003.**

The Commission should continue for a two-year “probationary” period.

This recommendation maintains the Commission as a stand-alone agency for two years, rather than for the standard 12-year period. The Sunset Commission would perform a limited review in 2002 to evaluate whether the agency has shown significant progress in addressing the problems raised in its Sunset review using the following criteria.

- Development and implementation of a contract with the Department of Information Resources to improve information technology.
- Development and implementation of a contract for legal services with the Office of the Attorney General.
- Effective implementation of the recommendations of the Sunset Commission.

These recommendations would ensure that the Funeral Service Commission obtains needed assistance and expertise to address its information management and legal problems. The Commission would be required to enter into a temporary contract with the Department of Information Resources (DIR) to assess, determine, and implement significantly improved technological resources. The Commission would need to prove that its information technology has improved to ensure that the Commission could compile standard information and statistics. The contract with the Attorney General’s Office would help ensure adequate access to legal services, including consultation about the daily operations of the agency, and correct interpretations of the Commission’s enabling statute.

1.2 Create a task force to guide the Commission in the implementation of these recommended changes.

A six-member task force would be chaired by a representative of the Comptroller of Public Accounts, and consist of representatives from the Department of Information Resources, Office of the Attorney General, and Office of the State Auditor. The Comptroller’s Office would also select one representative of the funeral industry and one consumer representative.

The task force would be charged with helping the Commission with automation, legal, and enforcement structures for effective regulation. The task force would expire in January 2003, when the 78th Legislature convenes.

1.3 For additional technical support, add the Commission as a member of the Health Professions Council.

This recommendation would allow the Executive Director of the Commission to interact with and benefit from the experience of other licensing agency directors. The Health Professions Council was created to enable directors of licensing agencies to share administrative efforts, identify model licensing techniques, standardize complaint and enforcement techniques, and ensure new board members receive appropriate training.

Management Action

1.4 The Commission should seek to relocate to the William P. Hobby State Office Building.

The Commission currently leases space in a private office building, and this lease will end in May 2001. The Commission should request that the General Services Commission move the agency into the Hobby Building. Because many of the licensing agencies of the Health Professions Council are located in this building, this recommendation would facilitate coordination with these agencies. If no space in the Hobby Building is available, the Commission should seek space with or near other state licensing agencies.

Issue 2

The Commission Does Not Provide Adequate Information to Consumers or Funeral Professionals.

Key Findings

- Insufficient information contributes to a lack of consumer awareness about the Commission and common problems to avoid in arranging a funeral.
- Insufficient and unclear information contributes to funeral industry professionals not understanding licensing requirements and being unaware of changes in the law and rules.

The limited information provided by the Commission can make it hard for consumers to plan a funeral and know where to complain if they have a problem, and for funeral professionals to know what is expected of them. The Sunset review identified actions that would help the Commission better educate consumers about funeral planning and complaint options, and professional members about funeral service regulations.

Recommendation

Management Action ---

2.1 The Commission should add consumer information to its Web site, including information on funeral prices and sanctions taken by the agency, and make the information available via fax and mail.

This recommendation would give the public easy access to funeral planning and complaint information. Information on funeral prices should include a range and an average of prices statewide for standard items such as direct cremation, full funerals, caskets, embalming, and the funeral director's fee. Categories of sanctions that are imposed on the industry should be posted.

2.2 The Commission should provide information to industry members to keep them informed of changes and activities of the Commission.

This recommendation would help to ensure that industry professionals are well informed about funeral regulations and pending changes. The materials should include:

- a clear, plain-language brochure that explains the responsibilities of funeral service professionals, including continuing education and licensing requirements, prohibited practices, and types of administrative penalties; and
- information alerts, in either electronic or print format, that are sent periodically to industry members; containing information on relevant legislation, complaints, and disciplinary actions taken by the Commission.

Improved information may help the Commission establish better public confidence.

Issue 3

The Commission Lacks Certain Key Components to Effectively License, Inspect, and Investigate Complaints Against Funeral Directors and Embalmers.

Key Findings

- The annual inspection requirement does not allow the Commission to target its limited resources for conducting effective on-site visits.

- The Commission experiences an excessive workload during each license renewal period.
- The Commission may misallocate its efforts and resources because it lacks a formal system to handle complaints according to severity.

Certain tools would enable the Commission to better manage its licensing, inspection, and complaint investigation functions. A staggered license renewal system would help to more evenly balance the Commission's workload throughout the year, allowing more time to ensure accuracy and to meet the needs of licensees. Adopting a risk-based approach to scheduling inspections and investigating complaints would also free up resources so the Commission can focus on addressing violations and responding to consumers' issues.

More effective use of limited resources allows for more thorough licensing and investigation processes.

Recommendation

Change in Statute

3.1 Require the Commission to base inspections of funeral establishments on a risk assessment tool but ensure that each establishment receives an inspection at least once every two years.

This recommendation ensures that the Commission spends its limited time and resources inspecting facilities that require the most attention.

3.2 Expand the Commission's authority to stagger the renewal of individual licenses to include establishment licenses.

The Commission should adopt a system under which both individual and establishment licenses expire during various dates of the year, such as on licensees' birth dates. A staggered system would prevent the agency from being overwhelmed with license renewals at certain times of the year.

Management Action

3.3 The Commission should implement a complaint resolution system that ranks complaints according to the order of initial receipt and severity of the alleged violation.

The Commission should review its categories of offenses and establish a hierarchy to handle complaints. This recommendation ensures consumer complaints are responded to appropriately, based on when they are received and the immediacy of the problem presented.

Issue 4

The Commission's Complaint Process Wastes Limited Agency Resources and Lacks an Effective Appeal Structure.

A fairer complaint process would provide a system of more appropriate avenues of appeal and participation.

Key Findings

- The Commission does not provide licensees and consumers with meaningful opportunities to participate in the complaint process.
- Staff cannot dismiss baseless cases without Commission member approval, causing a lengthy dismissal process that burdens staff, Commission members, complainants, and licensees.
- The agency's complaint process subjects licensees to an unfair appeal structure.

The Commission does not have formal rules outlining a complaint process, and its current procedures do not ensure that complainants and licensees have an open and fair system in which to participate. In addition, this process unnecessarily places burdens on the Commission members and agency staff.

Recommendation

Change in Statute

4.1 Require the Commission to adopt rules that comprehensively outline a complaint process.

4.2 Remove the provision authorizing Commission member participation in informal hearings.

Under this recommendation, the rules must include procedures defining the receipt, investigation, and disposition of complaints; informal hearings; and formal hearings. The process adopted should allow staff to administratively dismiss cases, enable complainants and licensees to fully participate, and ensure that Commission members do not make initial decisions. To avoid the appearance of bias, Commission members would no longer be allowed to participate. These changes would provide people with meaningful opportunities to participate in the complaint resolution process, and allow the Commission to better focus its efforts on investigating and resolving cases.

Issue 5

The Commission Does Not Have Appropriate Guidelines in Place for Imposing Fines and Sanctions.

Key Findings

- The agency's statute does not provide many standard safeguards regarding the effective use of sanctions.
- The Commission's rules provide little useful guidance for appropriately and consistently applying fines.
- The Commission does not keep clear records for tracking or evaluating its application of sanctions by category of violation.
- Without clearer guidelines and records, the Commission may be open to potential litigation over arbitrarily and inconsistently assessed sanctions and fines.
- The Commission's practice of assessing a fine for every violation is unusual, and in many cases an inappropriate and ineffective approach to ensuring compliance.

The use of sanction guidelines would help alleviate the appearance of arbitrary and inconsistent fines.

Despite having clear authority to use a wide range of sanctions, the Commission sanctions all violations with fines. The Sunset review examined the penalties in comparison to other Texas licensing agencies and concluded that the Commission would benefit from clearer guidelines to ensure consistency and a more effective use of fines and sanctions.

Recommendation

Change in Statute

- 5.1 Amend the Commission's administrative penalty provisions to require the consideration of standard factors, such as the seriousness of the violation and the threat to the public's health or safety, in setting the amount of a fine.**

The Commission's enabling law should clearly specify standard factors to consider when assessing penalties. These factors help ensure that fines are used in a constructive, judicious manner to effect compliance, not simply as a punitive measure.

5.2 Require the Commission to adopt, by rule, guidelines for more consistently linking violations with the appropriate sanction or fine.

This recommendation helps to ensure the appropriate application of sanctions to violations. The Commission should clearly define and summarize the most common violations, and establish a matrix to grade violations before applying sanctions. Before developing proposed rules, the Commission should use focus groups to obtain industry and consumer input. The matrix should be posted on the Commission's Web site.

Management Action _____

5.3 The agency should annually report to the Commission a summary of all violations confirmed and the sanctions imposed to address these violations.

The Commission should include a summary of violations in its biennial strategic plan to the Legislature, and place it on the agency's Web site. Making the information available to consumers on the Web site would help to ensure consumer confidence by showing that the Commission sanctions its licensees appropriately.

Issue 6

Not Regulating the Burial and Final Disposition of a Body Fails to Adequately Protect Consumers from False or Deceptive Practices.

Key Findings

- The Commission receives complaints regarding cemeteries and crematories, but cannot investigate them because it lacks jurisdiction.
- Many cemeteries fail to provide consumers with accurate information on prices, refunds, financing, or the legal requirements regarding the purchase of cemetery products.
- Many consumers are unaware that funeral directors are not accountable for these services, even when the funeral director subcontracts for the cemetery or crematory services.

The Sunset review found that cemeteries and crematories have the same potential consumer complaint issues as funeral homes. Thus, the State's regulatory authority should be expanded to cover these services, whether contracted for directly or through a funeral director, to rectify consumer complaints regarding certain aspects of a burial or cremation.

Recommendation

Change in Statute

6.1 Require the registration of owners or operators of cemeteries and crematories with the Funeral Service Commission to ensure responsibility for the complete disposition of a body.

This recommendation would require cemetery and crematory owners or operators to register for a permit to operate in Texas, and gives the Commission the authority to rectify consumer complaints directed at these providers. This recommendation would not subject cemetery owners to regulation of their operations by the Commission beyond the final disposition of a body.

Cemetery owners who are currently registered with the Department of Banking as "perpetual care cemeteries" would still be subject to the professional accountability recommended in this Issue, however they would be exempt from having to register with, and pay a second fee to, the Commission.

6.2 Require cemeteries and crematories to disclose information to consumers.

This recommendation would require that the same disclosure requirements that currently apply to funeral homes be extended to cemeteries and crematories.

6.3 Authorize the Commission to enforce violations of unprofessional conduct by owners or operators of cemeteries and crematories, as defined by Commission rules.

This recommendation would authorize the Commission to impose a range of penalties for violations of the statute.

6.4 Authorize the Commission to set, in rule, reasonable fees to cover the costs of registration of cemeteries and crematories.

Expanded regulation ensures professional responsibility of everyone involved in the final disposition of a body.

This recommendation would allow the Commission to determine and establish a single cost-recovery fee for administering the registration of owners of cemeteries and crematories, and to incorporate into fees the estimated costs for the investigation of complaints.

6.5 Ensure that funeral directors are responsible for services and goods they subcontract or arrange for as part of a package funeral, including cemetery and crematory services.

This would ensure that funeral directors who subcontract for cemetery and crematory services are held accountable for the entire disposition of the body; clearly defining in statute that a funeral director’s responsibility ends when the body is interred, rather than ending when the services are complete.

Issue 7

The Composition of the Funeral Service Commission Violates Recent Changes to the Constitution.

Key Finding

- The composition of the Funeral Service Commission violates the terms of a recently adopted Constitutional amendment.

In the last session, the Legislature reduced the Commission’s size from nine to six members – four public members and two industry representatives. After completion of the legislative session, Texas voters approved a constitutional amendment requiring state agency boards to be composed of an odd number of members. The Sunset review examined the impact of the constitutional amendment and concluded that adding an additional industry member would bring the Commission into compliance with the Constitution, while maintaining a majority of public members.

The Commission should remain with a majority of public members.

Recommendation

Change in Statute

- 7.1 Expand the Funeral Service Commission from six to seven members by adding a funeral industry representative.**

This recommendation would change the composition of the Commission to four public members and three funeral industry representatives. Current requirements for the Chair and Vice Chair to be public members would remain in place.

Issue 8

The Commission Lacks the Authority to Automatically Revoke a License if the Licensee Is Convicted of a Felony.

Currently, the Commission can refuse to issue a license to a violator of its statute, but the Commission cannot revoke a license without a hearing. Even in cases where a licensee has been convicted of a serious crime, the Commission must go through the full hearings process to revoke the individual's license.

Recommendation

Change in Statute

8.1 Give the Commission the authority to revoke, without a hearing, a funeral industry license if the licensee is convicted of a felony related to the funeral industry.

This recommendation would allow the Commission to automatically revoke a license, without a hearing, in cases of proven criminal activity related to the licensee's work in the funeral industry.

Issue 9

Ethics Training Is Not Included in the Continuing Education of Funeral Industry Professionals.

Continuing education requirements for funeral professionals are established by Commission rule and are required for the initial education of funeral industry professionals only. While the Commission must approve every continuing education provider and program, it does not establish the content of the programs.

Recommendation

Management Action _____

9.1 Require the Commission to include, by rule, ethics training in the continuing education requirements for funeral industry professionals.

This recommendation would ensure that ethics training is included in all the programs offered.

Fiscal Implication Summary _____

Four of the recommendations regarding the Funeral Service Commission would have a fiscal impact to the State, however these costs should be covered by licensing fee revenue. They are discussed below, followed by a chart that summarizes the fiscal impact.

- Issue 1 Continuing the Commission for a probationary period with outside computer and legal assistance would require several one-time expenditures followed by lesser, annual maintenance costs. All costs should be absorbed by increased licensing fees.
- Issue 2 Providing more easily accessible information could require additional Web site contracting, but any costs should be minimal and covered within existing resources.
- Issue 6 Expanding the Commission's authority over certain cemetery and crematory services would require additional expenditures and two new FTEs, but new permitting fees would cover additional costs.
- Issue 7 Expanding the Commission's size to seven members would require additional travel expenses and per diem for the new member.

Fiscal Year	Gains to the General Revenue Fund	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$350,860	\$350,860	+2
2003	\$75,648	\$75,648	+2
2004	\$75,648	\$75,648	+2
2005	\$75,648	\$75,648	+2
2006	\$75,648	\$75,648	+2

General Services Commission



Agency at a Glance

The General Services Commission (GSC) provides business services for state agencies and other governmental entities. The Legislature first created a single state agency to provide business services in 1919 by consolidating 21 state agencies and establishing GSC's predecessor, the State Board of Control.

- GSC's Central Procurement Services Division administers the state procurement process to acquire goods and services for state agencies. Using statewide term contracts and open-market requisitions, GSC managed more than \$1 billion in purchases for state agencies in fiscal year 2000.
- GSC provides support services, including building maintenance and custodial services, printing services, mail services, business machine repair, and centralized travel services, for state agencies.
- The Telecommunications Services Division of GSC, created in 1975, plans, operates, and manages the State's telecommunications system used by employees throughout the state, including more than 22,000 users in the Capitol Complex.
- GSC manages 22 state-owned buildings and 10 parking garages in the Capitol Complex. In addition, GSC leases more than 11.7 million square feet of space for about 100 state agencies located throughout the state.

Key Facts

- **Funding.** GSC spent \$151 million in fiscal year 2000. Of this, \$50.4 million went for capital projects, \$26.4 million for personnel costs, and \$74.2 million for operating costs.
- **Sources of Revenue.** Bonds issued by the Texas Public Finance Authority to purchase, construct, renovate, and repair state facilities constituted \$44.3 million of GSC's fiscal year 2000 budget. General Revenue funds made up \$82.3 million, \$18.4 million came from reimbursements from other agencies, and the remaining revenue came from various other sources.
- **Staffing.** GSC had 811 full-time equivalent positions in fiscal year 2000. Thirty-one staff were located at surplus property warehouses in Fort Worth, Lubbock, Houston, and San Antonio, and the remainder work in Austin. GSC supplements its staff by contracting with private vendors for a portion of their janitorial and maintenance services.

General Services Commission



- **Procuring Goods and Services.** GSC procures goods and services essential to government agencies, including telecommunication services, information technology equipment and services, state employee travel and credit card services, and term contracts for equipment and consumable supplies.
- **Managing State Facilities.** Through its facilities management programs, GSC plans and oversees state construction projects; provides janitorial, ground, and facility maintenance services; obtains and distributes federal surplus property; and manages the State Cemetery under the direction of the State Cemetery Committee.

Commission Members (6)

Gene Shull, Chair (Tyler)

James A. Cox, Vice Chair (Austin)

Tomas Cardenas, Jr. (El Paso)

Dionicio Vidal Flores (Houston)

Fred N. Moses (Plano)

Barbara Rusling (Waco)

Agency Head

Ann Dillon, Acting Executive Director, (512) 463-3446

Recommendations

- Transfer Responsibility of the State's Telecommunications Operations, Along With the Development of E-Procurement and E-Travel, from GSC to the Department of Information Resources (DIR).
- Establish a New Telecommunications Planning and Oversight Council to Oversee State Telecommunications Operations.
- Effectively Implement Electronic Procurement for the State.
- Allow GSC to Use a Broader Range of Contracting Methods to Design and Construct State Facilities.
- Require GSC to Procure Leased Space Using a Best-Value Process and Private Sector Experience.
- Assign Responsibility for the State's Surplus Property Disposal Process to GSC.
- Require GSC to Establish a Mandatory Recycling Program for State Agencies.

General Services Commission



Recommendations (cont.)

- Require GSC to Contract for an Internet-Based Travel Reservation Service in Addition to Its Existing Travel Agency Contracts.
- Require GSC to Develop a Systematic Approach to Reviewing Its Commercially Available Activities for Outsourcing.
- Require DIR to Develop Statewide Contracting Guidelines and Training Materials, and to Provide Ongoing Assistance to State Agencies With Their Contracting Efforts.
- Amend the Conflict of Interest Provisions Within DIR's Statute.

Issue 1

The State Is Not Well-Positioned to Effectively Manage the Future of Technology and Procurement Resources.

Key Findings

- Advances in technology are significantly changing the delivery of GSC's procurement and telecommunication services.
- Splitting the responsibility for managing the State's key information technology resources has resulted in poor planning and use of these resources.
- GSC has not effectively managed the conversion to TEX-AN 2000 and the State faces significant opportunity costs due to the inability to provide TEX-AN 2000 services as originally planned.
- Having a single state agency responsible for the State's key information technology resources would better position the State to take advantage of technology to improve services.

The State must position itself to take advantage of the numerous technological advances that are rapidly changing the way government information and services are delivered. Currently, the State has two agencies managing its key information technology resources, GSC and DIR. The lack of a single entity responsible for managing these resources has resulted in poor planning and use of these resources. GSC's electronic procurement pilot is still several years away from statewide implementation, and significant operational and contracting problems have prevented effective transition to the State's TEX-AN 2000 telecommunications system.

The State must improve the operation and oversight of the telecommunications networks managed by GSC. Telecommunications staff have had significant difficulty negotiating effective contracts for the TEX-AN 2000 system, and they have not addressed many customer concerns during the conversion to the new system. GSC executive staff and Commissioners have not effectively monitored the performance of the telecommunications staff, while TEX-AN customers do not have a voice in the operation of the network. These problems have created great uncertainty and a loss of confidence in the conversion process on the part of TEX-AN customers, which has severely limited the initial effectiveness of the new TEX-AN 2000 system.

Recommendation

Change in Statute

DIR could better manage the State's key information technology resources.

1.1 Transfer the responsibility for the State's telecommunications operations from GSC to the Department of Information Resources (DIR).

The successful operation of the State's telecommunications system is in jeopardy. If an entity with stronger expertise and oversight capabilities is not given responsibility for this system, the State faces the possibility of implementing an inferior telecommunications network with resulting significant opportunity costs. These recommendations are intended to improve the operation and oversight of the TEX-AN network, reduce the potential risks to the State in future telecommunications contracts, and maximize the value of the services provided to network customers.

1.2 Require DIR to develop e-procurement and e-travel, but place operational responsibility with GSC once development is complete.

The Department of Information Resources would be responsible for developing the State's electronic procurement system and electronic travel functions. Once development is complete, the General Services Commission would have operational responsibility of these functions.

1.3 Create an information technology program office within DIR for oversight of major state information technology projects.

The information technology program office within DIR would coordinate and implement major information technology projects specifically designated by the Legislature.

1.4 Reduce the membership of the General Services Commission from six members to five members to meet constitutional requirements, and continue the Commission for 12 years.

The General Services Commission would become a five-member Commission to make the Commission structure compliant with the constitutional requirement that state boards, commissions, and other agencies must be governed by an odd number of three or more members. When the terms of two of the Commission members expire on January 31, 2003, the Governor would appoint only one new member. The General Services Commission would be continued for 12 years to provide centralized procurement, building, property, and grounds services for state agencies.

1.5 Transfer authority to set the budget and salary structure of the State Cemetery Division from GSC to the Texas State Cemetery Committee.

This recommendation places responsibility for the hiring and budgeting decisions for the Texas State Cemetery with the citizens appointed by the Governor to operate it. The State Cemetery Committee should become a line item appropriation within GSC's appropriation strategy to administer the Texas State Cemetery. The Committee would follow all Appropriation Act requirements, such as salary schedules. The State Cemetery will continue to function as a division of GSC, follow all GSC's human resources guidelines, and receive general administrative services through GSC.

Issue 2

The State Should Reform the Oversight of State Telecommunications Services.

Key Findings

- The State does not have an effective means to oversee telecommunications operations.
- The Telecommunications Planning Group is limited to performing strategic planning for state telecommunications services.

The State must improve the oversight of the telecommunications networks managed by GSC. A new planning and oversight council would improve the ability of State leaders and network customers to monitor and assess the implementation of state telecommunications policies. A study of alternative service options for telecommunications services would allow State leaders to make informed decisions about improving the provision of state telecommunications services through organizational reforms.

A new planning and oversight council would improve the oversight of state telecommunications services.

Recommendation

Change in Statute

- 2.1 Establish a new Telecommunications Planning and Oversight Council to oversee state telecommunications operations.**

The new Council would replace, but retain the duties of, the existing Telecommunications Planning Group, and expand its role to encompass regular oversight and monitoring duties. The Council would:

- perform strategic planning for all state telecommunications services, in accordance with the guiding principles of the State Strategic Plan for Information Resources Management;
- develop service level objectives for the TEX-AN and CCTS networks;
- develop performance measures for network operations and staff;
- review the financial performance of the networks and the status of all projects related to the networks every three months, with a comparison between actual performance and projected goals;
- make recommendations to the governing board of the Department of Information Resources (DIR) on issues related to the networks;
- submit an annual report with detailed performance information for the networks to DIR and the customer agencies; and
- submit a biennial report to the Legislature showing system performance, identifying telecommunications system needs, and recommending statutory changes necessary to enhance system capability and cost-effectiveness.

The new Council would have 11 members:

- one member representing the Comptroller of Public Accounts;
- the executive director of the Telecommunications Infrastructure Fund;
- one member representing state agencies with 1,000 employees or more, appointed by the Lieutenant Governor;
- one member representing state agencies with fewer than 1,000 employees, appointed by the Speaker of the House;
- one member representing higher education, appointed by the Commissioner of the Higher Education Coordinating Board;
- one member representing the University of Texas System, appointed by the Chancellor;
- one member representing the Texas A&M University System, appointed by the Chancellor;

- one member representing public school districts that are TEX-AN customers, appointed by the Governor;
- one member representing local governments that are TEX-AN customers, appointed by the Governor; and
- two public members with telecommunications expertise, appointed by the Governor.

The appointed members of the Council would serve two-year terms. The Telecommunications Division of DIR would provide staff and other support necessary to assist the Council in fulfilling its duties.

The Department's Telecommunications Division would also provide quarterly updates to the Council on the financial performance and the status of projects for the TEX-AN and CCTS networks, as well as the success of the Division in meeting service level objectives and other performance measures. The Council would submit recommendations to the DIR Board to improve the operation of the networks, based on its own reviews of network performance, or in response to concerns raised by network customers or staff.

Management Action _____

2.2 DIR should examine options for alternate methods of providing telecommunications services.

The Department, assisted by the Telecommunications Planning and Oversight Council, should study the feasibility of alternate methods of providing telecommunications services, including the consolidation of state telecommunications networks into a non-profit corporation or quasi-governmental organization, and the potential for outsourcing telecommunications services and management. The Department should report its findings to the Legislature by December 1, 2002, and should seek input from other state agencies, local governments, and private sector vendors in developing the report.

Issue 3

Provide for Effective Implementation of the State's Electronic Procurement Network.

Key Findings

- The State is in transition to a single, statewide electronic procurement system.

A single, statewide electronic procurement network promises significant savings for the State.

- Unresolved issues will prevent the successful, statewide implementation of the electronic procurement network.
- The requirement for all agencies to participate in the electronic commerce network is not clearly defined.
- The electronic procurement network eliminates the need for the Centralized Master Bidders List (CMBL) in its current form.

Recognizing that electronic commerce is becoming a standard business practice, the Legislature directed GSC to implement an electronic procurement network. A single, statewide electronic procurement network, through which all agencies perform purchasing, promises significant direct and indirect savings for the State. However, before realizing the benefits of electronic procurement, the State must address some concerns. These recommendations seek to clarify the State's intent to make electronic procurement the standard method for state purchasing and to improve its viability by calling on the Department of Information Resources and GSC to identify and address problems, consider new purchasing methods, and eliminate obvious inefficiencies and duplicative efforts.

Recommendation

Change in Statute

3.1 Clarify that, upon full implementation of the electronic procurement network, all state agencies must use the network for purchasing.

As state procurement continues to decentralize, the State must make certain that all agencies participate in electronic procurement to ensure that statewide purchasing data is collected and the State's purchasing power is not diminished. To this end, this recommendation would require all agencies to perform all relevant purchases through the network. This recommendation would not affect current exempt or delegated purchasing authority and would not apply to purchases for major construction projects or other construction-related purchases.

3.2 Require GSC and the Department of Information Resources to integrate the Centralized Master Bidders List into the electronic procurement network, but maintain the vendor notification service.

In preparing the electronic procurement network for full implementation, the Department of Information Resources would transfer the functions and services currently provided by the CMBL to the electronic

procurement system, effectively integrating the list. In operating the electronic procurement network, GSC would continue to offer vendors notification of relevant requisitions on a cost-recovery basis.

3.3 Transfer the Electronic State Business Daily to GSC, terminating it once the electronic procurement network is fully capable of posting procurement information.

This recommendation would transfer responsibility for the Electronic State Business Daily from the Texas Department of Economic Development to GSC. GSC would continue to perform the functions of the Daily until the electronic procurement network, as developed by the Department of Information Resources, is fully capable of posting statewide procurement information. At such time, the service provided by the Daily would be superfluous and it would be discontinued.

3.4 Authorize GSC and the Department of Information Resources to establish reverse auctions as an alternate purchasing method within the electronic procurement network.

Just as the private sector has enjoyed the use of reverse auctions, this recommendation would authorize GSC and DIR to establish reverse auction procedures for the State's use. Although receiving sealed bids is a key aspect of the State's current competitive bidding process, this recommendation acknowledges that reverse auctions also promote fair competition and should be considered as an exception to the State's sealed bid requirements.

Management Action _____

3.5 The Department of Information Resources should assemble interagency expertise in the areas of procurement and information resources to help it evaluate the electronic procurement network.

Before statewide implementation of the electronic procurement network, DIR should convene a task force of representatives of state agency purchasing and information resources divisions to review the network in its entirety and evaluate the workability of key components, such as the ability for the network to interface with agencies' financial systems, the provision of adequate security measures, and the appropriateness of user fees.

GSC and DIR should work together to continually improve the State's procurement processes.

3.6 GSC and the Department of Information Resources should study and implement other innovative procurement methods where feasible.

This recommendation directs GSC and DIR to research additional procurement methods in an effort to continually improve the State's ability to streamline and improve the purchasing process. GSC and DIR should implement new procurement methods that comply with existing procurement statutes, and support fair competition and best-value purchasing principles.

Issue 4

GSC Continues to Struggle with Construction Management, but Added Tools Could Help the Agency Succeed.

Key Findings

- Both internal and external audits have well documented GSC's past problems in managing construction projects for the State.
- GSC did not effectively manage its most recent major construction project, the Robert E. Johnson building.
- State law limits GSC from entering into contracts with design and construction professionals that could reduce the risk of financial loss and construction delays.
- The Legislature has granted institutions of higher education the authority to pursue alternate construction contracting methods.

Authorizing a broader range of contracting methods should help GSC run its construction functions more effectively.

Facility construction is a significant responsibility of GSC, as the agency's \$243 million fiscal year 2000 construction budget illustrates. Yet, GSC has experienced difficulty managing the State's building construction operations. Several projects managed by the agency have exceeded their budgets, fallen behind schedule, and contained significant design flaws. GSC's lack of a project management tracking system has aggravated the situation by rendering the agency unable to accurately account for crucial elements of its construction operations.

GSC also does not have access to construction contracting methods that could help it run its construction functions more effectively. In fact, GSC's limited contracting options may be at the root of some of its most significant problems. Private businesses and other public entities successfully use alternative contracting methods, and research

proves their effectiveness in cost and time savings. These recommendations will not guarantee that GSC fulfills its role effectively, but the agency should have access to the tools necessary to succeed.

Recommendation

Change in Statute

4.1 Allow GSC to use a broader range of contracting methods to design and construct state facilities.

Authorize GSC to use the following project contracting methods:

- competitive sealed proposal,
- design-build, and
- construction-manager-at-risk.

GSC's current authority to contract for design and construction services is limited and is not consistent with best practices used by other organizations to manage the risk associated with large construction projects. The authority to negotiate with bidders and to enter into design-build and construction-manager-at-risk contracts could help protect the State and establish clear accountability for project delays and overruns. GSC's statute should mirror the Texas Education Code that authorizes institutions of higher education to pursue a number of different methods of contracting for construction. Also, GSC should adopt rules establishing the circumstances for use of each method of contracting for design and construction services. The rulemaking process will provide design and construction professionals the opportunity for input into the criteria used by GSC to determine which method of contracting is best for particular types of projects.

Management Action

4.2 GSC should develop and maintain a project management tracking system.

Several audits have found that GSC lacks an effective project management system. The agency should consolidate existing multiple-project databases to eliminate redundancy and inaccuracies, and should work with the University of Texas System's Office of Facilities Planning and Construction to implement an effective project management tracking system.

4.3 GSC should institute a training program for project management employees.

The project management field is constantly changing as new technologies develop and practitioners share ideas and experiences. GSC should ensure that its employees do not become static by providing them with ample opportunities for continuing education and professional development. GSC should maintain an annual staff-training budget for each employee, and reimburse staff members for approved job-related training.

Issue 5

GSC's Leasing Program for Office Space Does Not Obtain the Best Value for the State.

Key Findings

- GSC is responsible for acquiring office and warehouse space for most state agencies.
- GSC is authorized to use a number of methods, including competitive procurement, to obtain lease space.
- GSC leasing activities do not achieve best value for the State.
- GSC does not follow industry best practices when leasing space.

Procuring state leases through a best-value process would streamline the process and improve the value the State receives for its lease dollars.

While authorized to use competitive proposals for leasing office space, GSC continues to exclusively use low-bid procurement methods. The low-bid method secures a price that is initially less expensive, but does not ensure that the State obtains the best value for its funds used to lease space. For example, factors such as the condition and location of the space, utility costs, access to public transportation, and security, can significantly increase costs and hinder provision of state services. In addition, the lengthy and cumbersome bidding process reduces competition and the number of willing vendors. Delays in the leasing process also lead to entering into emergency leases at significantly higher rates. Requiring GSC to procure leases using a best-value process and private sector expertise, would streamline the process and improve the value the State receives for its lease dollars.

Recommendation

Change in Statute

- 5.1 Require GSC to procure leased space using a best-value assessment.**

5.2 Require GSC to adopt rules that establish guidelines for the best-value assessment of bids for leased space.

5.3 Authorize GSC to negotiate with bidders to obtain a satisfactory lease for the State.

A best-value approach to procuring space is authorized in state law and referenced in GSC rules, but not mandated. Absent a specific mandate to use best-value methods, and an operational definition of how to consistently determine best value, GSC has procured leased space solely on the basis of the lowest bid, or by a large amount of emergency leases. These recommendations would require GSC to consider factors other than price alone when selecting leased space for state agencies. Mandating that GSC use a best-value approach to leasing, will ensure that the State gets best value for its dollars while maintaining strong competitive features of the leasing process. Authorizing GSC to negotiate with bidders when leasing space will help ensure that needs are met and should significantly reduce the number of emergency leases.

5.4 Authorize GSC to contract with local real estate brokers to assist state agencies in locating and leasing space.

This recommendation would allow GSC to implement industry best practices such as precertification of space, negotiations with lessors, and use of local real estate professionals to locate space. The authority to enter into contracts with local real estate brokers should improve agency decisionmaking, increase competition, and reduce agency workload. Contracts should ensure that space offered to the State complies with accessibility requirements and fully meets all state specifications.

5.5 Authorize GSC to delegate leasing authority to state agencies and institutions of higher education.

GSC procedures for leasing space are cumbersome and time consuming. Agencies that require small amounts of space, at relatively low cost, must participate in a lengthy GSC-administered procurement process that seldom yields significant competition. Because vendors are usually unwilling to prepare and submit a bid to lease a small amount of space, GSC's process offers no real benefit to the State. This recommendation would allow GSC to authorize agencies to procure low-cost, short-term leases without GSC's direct involvement, although agencies would still be required to comply with GSC leasing regulations.

5.6 Require GSC to notify the Governor, Legislative Leadership, and the Chair of the respective agency's Board when an agency does not comply with leasing requirements.

This recommendation would require GSC to notify state leaders, including the chairs of the Senate Finance and House Appropriations committees, of the estimated fiscal impact that results when an agency does not comply with GSC leasing requirements. Agencies frequently fail to meet GSC leasing deadlines, and then seek emergency leases that avoid competitive procurement. Emergency leases, with a value of \$50 million over a biennium, can result in significant costs to the State when it pays more than the market rate for space.

Issue 6

GSC Lacks Authority to Streamline the State's Surplus Property Program.

Key Findings

- The State's process for surplus property disposal is cumbersome and inefficient.
- The State uses best-value methods for purchasing new property, but not for disposing of surplus property.
- The Federal Surplus Property Program has resources that could be shared with the state program.

Agencies have little incentive to quickly or cost-effectively dispose of equipment and other property no longer needed. The current process, as required in statute, is lengthy and cumbersome, with limited budgetary reward at the end. As a result, many agencies simply store unneeded property, often at a significant cost. GSC is best positioned to establish a program that quickly removes surplus from an agency's storage. By providing authority to establish the best-value method of sale, and integrating state and federal surplus property activities, the State could achieve quicker results and potentially greater fiscal gains. In addition, this approach would allow other agencies and eligible entities to continue having a first chance to obtain needed state surplus items to maximize reuse of state assets.

Recommendation

Change in Statute

6.1 Assign responsibility for the State's surplus property disposal process to GSC.

6.2 Require agencies to transfer surplus property to GSC for disposal if GSC determines that the State would save money through the transfer.

GSC would select agencies to participate in the program starting January 1, 2002, and would transition all agencies to the program by January 1, 2003. GSC must establish standards to determine when surplus property is more efficiently disposed of by GSC than by the originating agency. GSC would be required to delegate surplus property disposal authority to an agency that requests such delegation, if that agency can show that there will be a savings to the State by having the delegated authority.

6.3 Authorize GSC to establish the process for sale or salvage of surplus property.

Require GSC to:

- decide if transferred property should be sold or salvaged, based on the condition of the property;
- establish a process to ensure that eligible entities continue to have an opportunity to purchase surplus property before using other methods of sale;
- determine the best-value method for the sale of surplus property, based on the type and condition of the property;
- contract for the disposal of property to be salvaged;
- restrict the program to Travis County and other counties with a federal surplus property warehouse unless GSC determines that expanding the program to other counties is cost-effective; and
- adopt rules to implement the changes above.

These recommendations would allow agencies to quickly dispose of unneeded property by significantly reducing the effort and costs involved. GSC would operate the surplus program on a cost recovery basis. Any additional income earned from sale of property would return to the originating agency, after GSC is reimbursed for administrative costs. Agencies and eligible entities would continue to have an opportunity to purchase surplus items before public sale.

Reducing the effort and costs involved would allow agencies to quickly dispose of unneeded property.

6.4 Authorize GSC to sell state surplus property directly to the public.

GSC should be permitted to sell property not claimed by an eligible entity directly to the public. GSC would set the fixed price for sale, in cooperation with the originating agency, if GSC determines that an auction or sealed bid would not maximize the return value of the property to the State.

Management Action _____

6.5 GSC should integrate the federal and state surplus property programs.

GSC should use the same staff and facilities to store and distribute federal and state surplus property, including the four federal surplus property warehouses. GSC would maintain separate inventory lists and financial records for federal and state property to satisfy federal requirements.

6.6 GSC should set performance standards for the timely disposal of property it receives from state agencies.

GSC must dispose of transferred property quickly to minimize its own storage and handling costs, as it does for federal surplus property. However, GSC must also maximize the income from surplus property sales. Performance standards would ensure that GSC has established expectations for achieving quick results with maximum returns.

6.7 GSC should explore implementing a system for selling surplus property through the Internet.

Other states, including Oregon, have implemented a system for selling surplus property through the Internet. GSC should explore selling the State's surplus property through the Internet to take advantage of any increased efficiencies and report the findings to the 78th Legislature.

Issue 7

The State Is Not Meeting Its Potential as a Leader in Recycling Efforts.

Key Findings

- Paper recycling is a priority for Texas government.
- GSC does not fully realize the benefits of paper recycling.

- GSC does not have an effective system for ensuring state agencies recycle.
- Other government entities have implemented effective recycling policies.

The Legislature designated the General Services Commission as the agency responsible for collecting recyclable materials disposed of in buildings under GSC's management. GSC also must assist agencies with developing their recycling programs. Despite these mandates, GSC has done little to ensure that state agencies recycle, partly because the agency's authority to enforce state law regarding recycling is unclear.

Even with clear authority, GSC will have to provide better information and education to state agencies regarding recycling. GSC also will have to establish better tracking and reporting methods, and define elements of its recycling program. Done effectively, a GSC-managed recycling program could lead to a reduction in the amount of trash sent to the landfill by state employees, as well as an increase in revenue from recycling paper and other materials.

Recommendation

Change in Statute _____

7.1 Require GSC to establish a mandatory recycling program for state agencies.

GSC should adopt rules to establish a recycling program for state agencies in GSC-maintained facilities. The program must:

- establish guidelines for proper recycling methods;
- set recycling goals and performance measures;
- require agencies to designate a recycling coordinator;
- create employee and custodial education activities;
- provide feedback and recognition to agencies when appropriate;
- require GSC to inform agencies when they do not recycle properly; and
- allow GSC to delegate recycling responsibility to an agency whose program meets or exceeds GSC standards.

Requiring GSC to adopt rules detailing elements of its recycling program and mandating state agency participation would clearly define both

GSC's and agencies' roles in the State's recycling program need to be better defined.

GSC's and agencies' roles in the State's recycling efforts. Addressing each component listed above puts GSC in a better position to manage the State's recycling program.

Management Action

7.2 GSC should establish the responsibilities of an agency recycling coordinator.

These responsibilities should include:

- representing the program to both agency management and employees;
- informing employees of the recycling program and their roles in it;
- monitoring program results to identify and resolve problems;
- communicating regularly with GSC; and
- coordinating with GSC to develop an action plan with measurable goals and a feasible timetable.

When agencies designate a recycling coordinator, it allows GSC to directly disseminate recycling information to employees. GSC should work with agency recycling coordinators to develop and maintain the recycling program. In addition, GSC should provide recycling training for coordinators.

7.3 GSC should include recycling performance measures when managing its custodial employees, including contract employees.

GSC should set reasonable measures to evaluate if custodians maintain paper separation and prevent contamination of recyclables. GSC should monitor custodians with periodic reviews, spontaneous checks, and employee complaint follow-ups.

7.4 GSC should offer educational and technical recycling information to state agencies.

GSC's recycling program coordinator should provide educational, advisory, and technical services to agencies in GSC-maintained facilities. Activities should include assistance in developing agency recycling procedures and evaluation of an agency's recycling methods. GSC's recycling coordinator should also work with agencies to establish incentive programs to maximize employee participation.

Issue 8

GSC Does Not Take Advantage of Online Technology That Could Streamline the State's Travel Program.

Key Findings

- GSC does not explore opportunities to streamline the State's Travel Management Program through online services.
- Private sector firms as well as other governmental entities use online reservation systems to streamline their employee travel programs.
- Data GSC uses to compute the State Travel Management Program's cost-savings is flawed.

GSC oversees the State Travel Management Program, including negotiating rates with airlines, rental car companies, hotels, and travel agencies. GSC has resisted using an e-travel reservation system designed specifically for state employee travel.

Technology to provide a secure Web site where state travel coordinators can conveniently make travel reservations exists. Both private and public entities successfully use these Web sites. Such a site could improve the process of booking state employee travel arrangements, and bring significant savings in time and money to the State. While continuing to mandate use of contracted rates, the State would create controlled Internet access to the rates for travel coordinators.

Online travel reservations would improve how state employee travel is arranged.

Recommendation

Change in Statute

8.1 Require GSC to contract for an Internet-based travel reservation service in addition to its existing travel agency contracts.

GSC, in conjunction with DIR, should be required to ensure that at least one of the State's contracted travel agencies offers an online electronic travel reservation system to state travel coordinators for booking air, hotel, and car rental services at contracted state rates. The contract should require the travel agency to develop a secure Web site for use by state employees and should accept reservations only with state-issued credit cards. Agencies would not be required to use

the online service; they could continue to use state-contracted travel agencies through traditional methods. Therefore, GSC should maintain at least one travel agency that accepts reservations over the phone or in person.

Management Action

8.2 GSC should compare its contracted rates to average consumer prices when assessing cost-savings for the State Travel Management Program.

GSC should secure more realistic data when calculating and reporting cost-savings for the State Travel Management Program. Few passengers pay the highest coach fare for airline travel, although GSC uses this price as its benchmark comparison. Using average air, hotel, and car rates would be more accurate.

Issue 9

GSC Does Not Have an Established Process to Evaluate the Potential to Outsource Its Services.

Key Findings

- GSC performs many tasks also offered by private sector businesses.
- GSC does not regularly assess whether its services could be provided more efficiently by outsourcing.
- The information GSC uses to evaluate its services is not useful for deciding whether to outsource a function.
- Other state agencies have effectively evaluated and outsourced support services.
- Several GSC programs have problems that could be addressed through competition.

Private sector businesses and other public agencies may provide many GSC's services more cost-efficiently.

Private sector businesses and other public agencies offer many of the same services as GSC, and may provide these services more cost-efficiently. GSC lacks an established process to evaluate whether GSC or a contracted vendor can provide goods and services at the best value to the State. Conducting a thorough cost comparison between GSC and vendors provides decisionmakers with useful information when considering outsourcing a function. Therefore, GSC should establish a regular process for reviewing its commercially available operations for the potential to outsource.

Recommendation

Change in Statute

9.1 Require GSC to develop a systematic approach to reviewing its commercially available activities for outsourcing.

This review should:

- identify if competitive vendors exist in the private sector;
- adhere to principles of Texas Council on Competitive Government's cost methodology; and
- document cost savings from outsourcing.

When an activity is available in the private sector, GSC should compare the cost of contracting to the cost of performing the activity in-house to determine the best value to the State. When conducting cost comparisons, GSC should ensure that all direct and indirect costs are considered. GSC should develop a schedule of programs to review each year, with all commercially available programs undergoing review at least once every six years. GSC should consult with CCG as necessary when planning and conducting its reviews.

9.2 Allow GSC to outsource a service only if a private business can provide the service with an equal or better level of quality, and decrease the cost of providing the service by at least 10 percent. GSC should be authorized to compete in the bidding process.

The State should not sacrifice quality of its goods and services when deciding whether or not to outsource a function; a lower bid price means nothing if the quality of the good or service decreases. Private sector businesses and other public entities that secure contracts as a result of outsourcing should be held to the same standards that a state agency would.

9.3 Require services that GSC outsources to be performance based.

Opting to outsource a function does not alleviate GSC of its responsibilities for delivering a product or service. GSC should set measurable standards that a contractor must consistently meet. For example, GSC should require contractors to provide periodic reports or updates, track user satisfaction, and follow up on all complaints.

9.4 Prohibit GSC from starting any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.

Before implementing a new program, GSC should conduct a full analysis on the availability and cost of similar products and services in the private sector.

Management Action _____

9.5 GSC should first perform competitive cost-analyses in several key areas.

Areas GSC should study first include:

- construction management;
- leasing of office and warehouse space; and
- business machine repair.

GSC has experienced significant problems in these areas and competition would allow the agency to achieve higher quality services for the state agencies that are its customers.

9.6 GSC should provide employees with training regarding the use of an activity-based cost accounting system.

If employees are to sufficiently evaluate the agency's programs, they must be trained to use the tools correctly. GSC should identify positions that will directly use activity-based costing and train the employees on the process.

Issue 10

Significant State Dollars Are at Risk Due to Poor and Inconsistent Contract Management.

Key Findings

- The State contracts for about \$14 billion in goods and services with limited contract oversight.

- Several recent studies and investigations highlight state agencies' poor contract management and the significant costs to the State as a result.
- The trend towards outsourcing more state services will demand more effective contract management.

State agencies continue to have problems in managing contracts, placing billions of state dollars at risk of misuse and fraud. This fact is particularly troublesome given increasing interest in outsourcing government services. Providing DIR with authority to develop contract guidelines and requiring state agencies to follow these guidelines would reduce many contract management problems while saving state dollars.

Training and the use of general contract guidelines would also reduce the burden currently placed on individual state agencies to develop their own contracts and would provide increased efficiencies in monitoring similar kinds of contracts. The benefits of consistent guidelines extend to the vendor community as well. Vendors doing business with the State would experience greater consistency between state agency contracts, resulting in reduced legal expenses for vendors and increased competition. These results translate into security and savings for the State.

Statewide
contracting
guidelines would
reduce contract
management
problems and save
state dollars.

Recommendation

Change in Statute

10.1 Require DIR to develop statewide contracting guidelines and training materials, and to provide ongoing assistance to state agencies with their contracting efforts.

10.2 Require the Office of the Attorney General to provide legal assistance to DIR in the development and implementation of statewide contracting guidelines.

10.3 Create an interagency working group to provide input and assist DIR in defining the State's needs with regard to statewide contracting guidelines.

These recommendations would charge DIR with developing contracting guidelines for state agencies including effective contract monitoring, contractor selection, and subcontractor performance, as well as standard contract provisions for common types of contracts. In particular, DIR would direct its efforts at those types of contracts which it identifies as posing the greatest risk to the State.

Selected state agencies should assist DIR in developing statewide contracting guidelines.

To assist agencies in following contracting guidelines, DIR would produce guidelines flexible enough to meet varying agencies' needs, develop training materials, and provide ongoing assistance to agencies in applying the guidelines.

In producing these guidelines and training materials, DIR would seek assistance from the State Auditor's Office to incorporate existing best practices identified for the State, and the Office of the Attorney General (OAG) for legal assistance in developing and implementing guidelines. Additionally, an interagency working group would assist DIR in determining appropriate state contracting guidelines. The working group would include SAO, OAG, the Comptroller of Public Accounts as well as other agency participants selected by DIR, including an institution of higher education.

10.4 Require state agencies to follow the contract management guidelines developed by DIR.

State agencies would be required to follow contract management guidelines developed by DIR for all procurements involving State appropriated funds. The guidelines would provide the flexibility necessary to meet varying agencies' needs. The State Auditor's Office would be able to gauge agencies' compliance with these guidelines, as part of its ongoing duties.

Issue 11

Amend the Conflict of Interest Provisions Within DIR's Statute.

The current conflict provision in the Information Resources Management Act is restrictive. Adding telecommunications and the planning of electronic procurement and electronic travel to DIR's functions will cover an even broader array of private sector employers, thus further limiting an already tight labor pool. An effective conflict of interest provision that gives the agency flexibility but guards against true conflicts will better enable the agency to carry out its duties.

Recommendation

Change in Statute

11.1 As an exception to standard conflict of interest provisions, amend the current conflict of interest provision in the Information Resources Management Act.

Require any DIR employee to be removed from the bidding process, including development of the proposal through award of the contract and negotiating the contract, if the employee receives income from any likely respondent or if a likely respondent employs the spouse of the employee.

Fiscal Implication Summary _____

Many of the recommendations regarding the General Services Commission would result in savings for the State. However, much of this savings could not be estimated. Some fiscal estimates were possible and are described below, followed by a five-year summary table.

- Issue 1 The recommendation to transfer statewide telecommunications operations to DIR would not result in a fiscal impact to the State, but would require a shift of telecommunications funding and staff from GSC to DIR. In addition, recommendation 1.2 creates an information technology program office within DIR. This program office would be funded by a percentage of the budgets of the major technology projects assigned by the Legislature to the office.
- Issue 5 Improvements to GSC's leasing practices and the delegation of leasing authority to state agencies and higher education institutions will result in a significant, positive fiscal impact to the State. Reducing the number of state emergency leases will result in a savings of about \$600,000 each year to the State.
- Issue 7 Strengthening GSC's recycling program to improve the State's recycling efforts should realize savings of at least \$49,000 each year to the General Revenue Fund.
- Issue 10 Improving the State's contract management will lead to significant fiscal savings which cannot be estimated at this time. However, two additional full-time equivalent positions, at a cost of \$138,900, will be needed to help develop statewide contract guidelines and training materials, and to provide general contracting assistance to state agencies.

Fiscal Year	Gains to the General Revenue Fund	Savings - Various Funds	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$49,000	\$600,000	\$138,900	+2
2003	\$49,000	\$600,000	\$138,900	+2
2004	\$49,000	\$600,000	\$138,900	+2
2005	\$49,000	\$600,000	\$138,900	+2
2006	\$49,000	\$600,000	\$138,900	+2

Texas Interagency Council for the Homeless



Council at a Glance

Created in 1989 to coordinate the State's homeless resources and services, the Texas Interagency Council for the Homeless consists of representatives from all state agencies that serve the homeless. The Council receives no funding and has no full-time staff, but receives clerical and advisory support from the Texas Department of Housing and Community Affairs (TDHCA). In addition, many of the Council's statutory duties are fulfilled through a TDHCA contract with the Texas Homeless Network, a non-profit organization that serves the homeless in Texas.

The Council's major functions include:

- evaluating and helping coordinate the delivery of services for the homeless in Texas;
- increasing the flow of information among separate providers and appropriate authorities;
- providing technical assistance to TDHCA in assessing the need for housing for people with special needs;
- developing, in cooperation with TDHCA and the Health and Human Services Commission, a strategic plan to address the needs of the homeless; and
- maintaining a central resource and information center for the homeless.

Key Facts

- **Number of homeless in Texas.** While estimates vary, the Council estimates that about 200,000 people, or 1 percent of the state's population, are homeless.
- **Mental illness.** About 25 percent of homeless people in Texas suffer from a serious mental illness.
- **People with disabilities.** More than 65,000 persons with disabilities did not have a regular means of shelter in 1999.
- **Women.** National figures indicate that women make up 19 percent of the homeless population. In Tarrant County, the percentage of women among the homeless population increased from 27 percent in 1991 to 48 percent in 1997. Estimates suggest that 30 to 50 percent of homeless women become so because of domestic violence, and 80 percent of the nation's homeless women have experienced some sort of violence.

Texas Interagency Council for the Homeless



- **Children.** Estimates show that over 125,000 schoolage children in Texas experience homelessness during the course of a year.
- **Veterans.** Estimates show that veterans comprise 30 to 40 percent of the nation's homeless population.

Council Members (19)

Greg Gibson, Chair (Texas Department of Mental Health and Mental Retardation)

Eddie Fariss, Vice Chair (Texas Department of Housing and Community Affairs)

Ray Bryant (Texas Department on Aging)

Tommy Cowan (Texas Education Agency)

Liz Cruz-Garbutt (Texas Department of Human Services)

Michael Jay Doyle (Governor appointee, North Richland Hills)

A.J. Ernst (Texas Commission on Alcohol and Drug Abuse)

Penny Finuf (Texas Department of Health)

Lance Hamilos (Texas Rehabilitation Commission)

Roy Kimble (Texas Workforce Commission)

Carolyn Lanier (Speaker of the House appointee, Lubbock)

Tracy Levins (Texas Youth Commission)

Robert Andrew Martindale (Lieutenant Governor appointee, San Antonio)

Anthony Moore (Texas Veterans Commission)

Inocencio Vasquez (Texas Department of Protective and Regulatory Services)

Office of the Comptroller of Public Accounts (vacant)

Texas Department of Criminal Justice (vacant)

Texas Department of Housing and Community Affairs, Housing Finance Division (vacant)

Health and Human Services Commission (vacant)

Recommendation

- Make the Council an Advisory Committee to the Texas Department of Housing and Community Affairs.

Issue 1

Homeless Services Need a Single Point of Accountability and More Visibility.

Key Findings

- The need to serve homeless people through coordinated services remains important to the State.
- No single agency has the primary responsibility for addressing homelessness at the state level.
- The Council lacks the necessary authority and visibility to directly impact homelessness.

Although the Texas economy has grown, many Texans are homeless, and the State has a continuing need to coordinate its numerous and fragmented homeless services. The Texas Interagency Council for the Homeless performs an important information-sharing function and has helped to establish a central information resource. However, because the State has no single point of accountability for homelessness and because many Council members lack necessary authority and visibility, the Council has had limited success directly impacting the problems of homelessness. Attaching the Council to the Texas Department of Housing and Community Affairs as an advisory committee, and requiring stricter membership requirements, should provide the committee with a forum for policy recommendations, increase its visibility, and encourage more active member participation.

Many members lack the authority to make decisions or commit agency resources, limiting the Council's impact on services.

Recommendation

Change in Statute

- 1.1 Charge the Texas Department of Housing and Community Affairs with primary responsibility for addressing homelessness at the state level.**
- 1.2 Make the Texas Interagency Council for the Homeless an advisory committee to the Department.**

Responsibility for addressing homelessness at the state level should be one of TDHCA's statutory purposes. The Council would continue to perform its current statutory duties, including ensuring that the Texas Homeless Network or another entity carries out those duties that the

Council cannot perform. As an advisory committee, members would have the authority to recommend policy to the Department's Board. Attachment to the Department would provide the Council with a single point of accountability, and a forum to recommend policy changes and interagency projects. Finally, attaching the Council to the Department would necessitate removing the Council's separate Sunset date. The Council would undergo review as part of any future reviews of TDHCA.

1.3 Require Council members to have responsibility in their agencies for homeless programs or related services, and the authority to make decisions and commit resources, subject to the approval of their agency head, on their agencies' behalf.

This recommendation should improve the attendance and participation of Council members, allowing the Council to accomplish more collaboration and possibly increase its ability to access funds from member agencies to implement programs. Because the Texas Department of Economic Development no longer has homeless-related programs, it should be removed from the Council's membership.

Management Action _____

1.4 Require the Department to maintain information about the Council on its Web site, and require each member agency to have a link to this site.

The Web site should include information about the Council and homelessness in Texas, and should also provide links to other information sources, including member agency sites and local resources.

Fiscal Implication Summary _____

The recommendations regarding the Texas Interagency Council for the Homeless will not result in a fiscal impact to the State.

Texas State Affordable Housing Corporation



Corporation at a Glance

The Texas State Affordable Housing Corporation (the Corporation) is a non-profit corporation created by the Legislature in 1995 to help serve the housing needs of low income residents of Texas. The Corporation operates under the name, Texas Star Mortgage, to provide single and multi-family loans to low-income Texans.

By law, the primary public purpose of the Corporation is to “facilitate the provision of housing and the making of affordable loans to individuals and families of low, very low, and extremely low income.” To accomplish this, the Corporation’s major functions are:

- single and multi-family lending to low income people, and
- financial self-sufficiency through loan servicing and asset management.

The Corporation has established goals to achieve its mission, which are to:

- promote partnerships leveraging public and private resources for the creation, preservation, and redevelopment of affordable housing;
- increase lending and housing production in rural and underserved markets;
- develop loan products, financing options, and special programs not available through conventional lenders; and
- achieve and ensure corporation self-sufficiency.

Key Facts

- **Funding.** The Corporation generates approximately \$6.5 million annually through bond proceeds, grants, fees, and investment revenue to make loans for affordable housing. The Corporation uses no State-appropriated general revenue.
- **Staffing.** In fiscal year 2000, the Corporation employed seven people.

Board Members (5)

Dawn Enoch Moore (Dallas)

Jeffy Romero (El Paso)

Jeffery Baloutine (Houston)

Donald Curry (Brownsville)

Karen Lugar (San Antonio)

Agency Head

Michael Sullivan, President (512) 377-3555

Issue 1

Continue the Texas State Affordable Housing Corporation for Two Years.

Key Findings

- The Corporation seeks to provide financing for affordable housing in areas (particularly rural areas and areas outside major metropolitan areas) that other organizations or lenders are not currently serving.
- In February 2000, the Corporation redirected its efforts away from its historical activities acting as a mortgage bank and grant administrator to issuing taxable single-family and multi-family tax exempt mortgage revenue bonds with the proceeds set aside for low income households.

Recommendation

Change in Statute _____

1.1 Continue the Texas State Affordable Housing Corporation for Two Years.

This recommendation would allow the Corporation to operate for two years, to be reviewed by the Sunset Commission before the next legislative session in 2003. This extension of the Sunset date for the Corporation will allow the Sunset Commission to better evaluate the effectiveness of the new business activities of the Corporation.

Fiscal Implication Summary _____

This recommendation would not have a fiscal impact to the State.

Texas Department of Housing and Community Affairs



Agency at a Glance

The Texas Department of Housing and Community Affairs (the Department) ensures availability of affordable housing, provides community assistance, and regulates the manufactured housing industry. The Legislature created the Department in 1991 by merging the Texas Department of Community Affairs, the Texas Housing Agency, and the Community Development Block Grant Program from the Texas Department of Commerce.

Key Facts

- **Funding.** The Department operates with an annual budget of \$201 million. Federal funds provide the majority of the agency's budget (\$176 million, or 88 percent, in fiscal year 2000). Other sources provide the remaining 12 percent of revenue, including the State's contribution of \$10.6 million, or 5 percent.
- **Staffing.** The Department has 343 employee positions. Two hundred and ninety people work in its Austin headquarters.
- **Affordable housing.** The agency helped 3,767 families purchase homes in fiscal year 2000 — 2,512 through mortgage loans, and 1,255 through down payment assistance.
- **Community development.** The Community Development Block Grant Program funded approximately 347 local infrastructure, planning, housing, and economic development projects in fiscal year 2000, serving 546,084 individuals.
- **Poor and homeless programs.** In fiscal year 2000, the Department's community services programs helped 1,040 people transition out of poverty.
- **Repair and energy assistance.** In fiscal year 2000, the agency weatherized 5,845 homes, and provided energy/utility assistance to 73,570 very low-income households.
- **Manufactured housing regulation.** Manufactured housing accounted for one-third of all new housing in Texas in fiscal year 2000, and the Department performed more than 14,803 routine installation inspections and resolved almost 1,809 complaints.

Board Members (9)

Michael E. Jones, Chair (Tyler)

Donald R. Bethel (Lamesa)

Margie Bingham (Houston)

Robert Brewer (San Angelo)

Texas Department of Housing and Community Affairs



C. Kent Conine (Frisco)
James A. Daross (El Paso)
Dr. Florita Bell Griffin (College Station)
Lydia Saenz (Carrizo Springs)
Marsha L. Williams (Dallas)

Agency Head

Daisy Stiner, Executive Director, (512) 475-3800

Recommendations

- Restructure the Department's Governing Board.
- Provide the Public with Meaningful Opportunities to Participate in Board Meetings and Agency Public Hearings.
- Require Strategic Planning and a Simpler Funding Cycle to Serve Texans With the Greatest Need.
- Require the Department to Use Multi-Family Housing Finance Programs to Maximize Resources and Outcomes.
- Ensure That the Department's Programs Provide Fair Access to Housing.
- Preserve Expiring Affordable Housing Stock.
- Ensure Consideration of Applicants' Compliance History Before Approval of Newly Proposed Projects.
- Create a Colonia Advisory Committee and Require Plans to Meet Colonia Resident Needs.
- Make Information About Community Resources and Affordable Housing Easily Accessible to the Public.
- Move the CDBG Program Out of TDHCA and Constitute It as an Independent Executive Branch Agency, the Office of Rural Community Affairs.
- Create a Separate Governing Board for the Regulation of Manufactured Housing.
- Continue TDHCA for a Two-Year "Probationary" Period to Ensure That Needed Changes Have Been Implemented.

Issue 1

The Department's Board, as Currently Structured and Operating, Is Not Adequately Serving as a Governing Board.

Key Findings

- In practice, a majority of the agency's Board members have professional backgrounds related to housing construction and housing finance that do not match with the broader mission of the agency.
- Narrow professional representation on the Board has resulted in meddling in agency operations and perceived conflicts of interest.
- The Board's current statutory structure prevents a complete and integrated view of all agency programs.

The Department's current Board structure is a relic of the old Texas Housing Agency and is not adequate for the current mission of the agency. In practice, a majority of the Board members have professional expertise related to the housing industry, which lessens their focus on the Department's other programs and creates potential conflicts of interest. In addition, the narrow professional representation on the Board produces unintended biases regarding the State's housing priorities. While this expertise is valuable, the State would be better served by individuals on the Board with a broader view of communities' needs.

The Department's Board structure is not adequate for the current mission of the agency.

Recommendation

Change in Statute

1.1 Restructure the Department's governing body as a seven-member Board composed of public members with demonstrated interests in housing and community support services issues.

Under this recommendation the size of the Board would be reduced from nine to seven members, and appointments would no longer have to meet specified representation requirements. The Department staff would provide members of the Board administrative support necessary to perform their respective duties and responsibilities. The Governor would appoint a new Board by September 1, 2001, composed of public citizens with broader interests in housing and community support services.

The new Board would be required to employ an Executive Director and develop a strategic action plan to implement changes mandated through the Sunset process and adopted by the Legislature. The Executive Director would be required to evaluate the organizational structure of the agency and key management positions, and to make any necessary organizational changes to facilitate implementation of the strategic action plan and any additional Sunset recommendations.

1.2 Remove references in law that constrain the Board’s ability to set policy agencywide or to reorganize divisions to best implement changes in policy.

This would remove specific references related to the Board’s authority over individual programs or divisions of the agency, clarifying the Board’s broad policy role over all of the agency’s programs. This would allow the Board to take a more integrated approach to policy development. It would also allow the staff to more fully integrate policies and programs across the agency.

Issue 2

The Department Does Not Encourage Meaningful Public Participation in Its Hearings, Harming Its Ability to Make Good Decisions.

Key Findings

- The Department does not provide the public with meaningful opportunities to participate in Board meetings or agency public hearings.
- Members of the public do not participate at Board meetings and public hearings because they perceive an unreceptive atmosphere and fear retaliation.
- The Department holds too many separate public hearings, resulting in poor attendance, a lack of cohesion between agency program policies, and duplication of staff effort.

The Department does not have a user-friendly public input process. Citizens feel that their views do not matter because the Board appears to have already made its decisions, or worse, that they will face retaliation if they do participate. In addition, by conducting separate hearings for each program area, the Department compartmentalizes the discussion of policy issues, obscuring the big picture view. In the end, the Department misses the opportunity for valuable feedback and perspective to improve its decisionmaking.

The Department does not have a user-friendly public input process.

Recommendation

Change in Statute

- 2.1 Require Department staff to publish and make available all relevant meeting materials at least seven days before a Board meeting.**
- 2.2 Require Board meeting agendas to contain each individual item of discussion.**
- 2.3 Require the Board to provide for public comment after the staff presentation on each agenda item.**

Under these recommendations, the Department would be required to make information available to Board members as well as the public. Board meeting agendas must state each individual project the staff has recommended that the Department fund. Finally, the Board must provide written justification if it does not follow advisory committee recommendations.

- 2.4 Require the Board to develop and implement rules that give the public a reasonable time frame in which to testify at Board meetings.**

As in legislative committee hearings and other agency Board meetings, the Board should encourage people testifying to summarize their comments and stay on point. The Chair should exercise reasonable judgment in setting time limits for public testimony, curtailing repetitive or irrelevant remarks.

- 2.5 Require the Board to develop and implement rules outlining a formal process to appeal Board decisions.**
- 2.6 Require the Department to consolidate its numerous public hearings into a single public hearing process.**
- 2.7 Require Department staff to publish all relevant meeting materials at least six weeks before each consolidated public hearing.**

The Department should consolidate its numerous public hearings into a single process.

The agency should consolidate hearings to the extent possible, but should also take into account valid reasons to hold separate hearings, such as issuing bonds, or to comply with federal mandates. The Department must hold a single consolidated public hearing in each uniform service region of the state. All material to be discussed at each consolidated public hearing must be sent to interested parties,

posted on the Department's Web site, made available in hard copy at the agency, listed in the Texas Register, and disseminated through any other means required by the Department's enabling statute or by the Open Meetings Act.

2.8 Require the Department to provide for public input before developing rules for programs with Requests for Proposal and Notices of Funding Availability.

This recommendation would ensure that rules affecting Requests for Proposal and Notices of Funding Availability address important public concerns, and would also eliminate the Department's need to republish materials based on ad hoc comments.

2.9 Require the Department to develop and implement rules outlining formal rulemaking procedures for the Low Income Housing Tax Credits Program and the Multi-Family Housing Mortgage Revenue Bonds Program.

These two programs, the Department's largest in terms of funding and people affected, require a more formal process to ensure adequate public input. These rules must include procedures for allowing any interested person to petition the Department requesting adoption of a new rule or amendment of an existing rule, notice requirements and time frames in accordance with the Administrative Procedure Act, and provision for public hearings.

Issue 3

The Department's Approach to Funding Housing and Community Support Services Does Not Serve Texans With the Greatest Need.

Key Findings

The Department's housing funds do not consistently reach Texans with the greatest need.

- The Department has no accurate assessment of Texas' housing and community service needs and resources on which to base its funding decisions.
- The Department's housing funds do not consistently reach Texans with the greatest need.
- Legislative mandates directing Department funds to needier Texans have not resulted in change in the Department's overall philosophy, or its funding practices.

- Department programs operate independently, precluding the strategic allocation and best use of housing funds.

Several steps would help the agency to ensure its funds meet the State's most pressing needs. These recommendations would improve the process by which the Department assesses the statewide need for affordable housing and community support services by region, and would require the agency to set priorities that meet the greatest need. Creating a uniform application and funding cycle and allocating funds according to regional priorities would allow service providers to prepare proposals that use a variety of funding sources to best meet the needs of a specific region rather than competing in independent, statewide allocations.

Recommendation

Change in Statute

3.1 Require the Department to develop a strategic plan, customized by region, to provide affordable housing and community support services.

This recommendation would require the Department to conduct a more thorough assessment of not only the need for housing and community support services in the state, but also the supply. The Councils of Government would be used in developing the strategic plan. With this new and improved information, the Department should decide funding priorities by Councils of Government regions, and ensure rural needs are met. In addition to regional priorities, this recommendation would require the Department to establish objectives for each income category.

3.2 Allocate funds to meet regional housing and community service priorities.

This recommendation would require the Department to establish priorities to ensure that awards go to the applicants who are best able to meet the needs as established by the Department, and that the most flexible funds are used to serve the lowest income residents when possible. The recommendation would also ensure that funds are awarded based on an applicant's ability to create the greatest number of units, reach people with the lowest income, extend the length of time the project will serve a public need, and use other funding sources to minimize the amount of subsidy needed to complete the project.

3.3 Create a uniform application and funding cycle for housing programs that supports projects that meet established need.

The Department should develop a regional strategic plan for its services.

By creating a uniform application and fund allocation cycle, the Department could consider proposals together, and assess their ability to meet regional objectives. This single process would allow the Department the flexibility to apply its funding tools to each project to ensure its greatest success. All allocation decisions and applicant scoring would give the greatest weight to those projects that go the furthest to meeting the State's established housing and community service objectives. This would allow the Legislature to eliminate the multiple legislatively-mandated funding requirements placed on the Department. Appropriation riders that direct the agency to use \$30 million of housing finance funds toward families with incomes of 30 percent AMFI or lower should no longer be necessary.

3.4 Require the Department to establish an Executive Award Review Committee to make funding allocation decisions.

This recommendation would require the Department to establish a special committee to set priorities in each region of the state and make funding decisions to meet the need, subject to Board approval. This committee would provide the agency, or the Board where appropriate, with a unified approach to awarding funds to projects. Applicants would apply to meet the needs established in a particular region of the state. The committee would determine which agency funding tools would make the best use of State resources.

Management Action _____

3.5 Develop a system that encourages local housing providers to use innovative products and tools that best meet the housing needs in their region.

The Department should explore ways for local housing and community service providers to fund innovative projects that are developed outside of the regular funding cycle, using lapsed funds and other de-obligated dollars or tax credits. This system would promote local creativity and allow for the development of best practices that could be modeled across the state. In awarding these grants and contracts, the Department should give extra credit to local initiatives that reach the lowest income families, and leverage private and local funds and resources.

Issue 4

The Department's Administration of Multi-Family Housing Finance Programs Does Not Maximize Resources and Outcomes.

Key Findings

- The Department's administration of the Low Income Housing Tax Credit program fails to maximize outcomes in the State's interest.
- Texas' limited allocation of private activity bond funding to multi-family housing limits developers' access to low-cost debt and federal tax credits.
- The use of a lottery for allocating multi-family private activity bond funds prevents the State from distributing these funds to best meet needs.
- Current restrictions on the 501(c)(3) bond program impose unnecessary barriers to non-profits accessing these funds.

Housing finance programs are not effectively serving low income families.

The State is not allocating funds in a strategic manner, not rewarding superior applications, leaving significant funds untapped, favoring large developers over smaller non-profit corporations, and engendering a perception of unfairness in the way funds are awarded. These problems preclude the Department from effectively serving low income families in need of affordable housing. The following recommendations would help the Department to reward project proposals that best serve the State's interests, increase the Department's flexibility in allocating multi-family funds, and increase the amount of available resources going towards the development of affordable multi-family housing.

Recommendation

Change in Statute

4.1 Require the Department to increase non-profit and public housing authority participation in the Low Income Housing Tax Credit program by providing appropriate incentives.

The Department should change its program structure to reward services that non-profit organizations are capable of providing, and reward public housing authorities receiving HUD HOPE VI grants. This recommendation would not require an increase in the set-aside for non-profit developers.

Instead, current barriers to non-profit participation in the general tax credit pool should be removed.

4.2 Require the Department's tax credit allocation process to reward applications with lower developer's fees.

As part of this recommendation, the Department should adopt a system to reward both for-profit and non-profit developers willing to earn less profit from their tax credit project and invest more of their tax credit equity into the project. Rewarding lower developer's fees encourages greater capital investment in tax credit projects and an increase in quality of the completed housing project.

4.3 Require the Department to cap the amount of tax credits per developer at \$2.4 million over a period of three years.

This recommendation would help spread the use of tax credits to more developers overall, and hopefully to more developers throughout the state. Furthermore, lowering the amount of tax credits that each developer is eligible to receive over time should decrease the factors creating the perception of favoritism within the program.

4.4 Require the staff to document its recommendations for project selection and prohibit the Board from changing staff recommendations except for good cause, which must be documented as a part of the public record of the Board's proceedings.

This recommendation would increase the accountability of the Department by ensuring the public is apprized of the Board's reasoning for making changes to the initial project selection recommendations.

4.5 Require Board approval for projects that undergo substantial change, including change of ownership, between initial approval and final commitment.

This recommendation would ensure that the projects that are ultimately approved by the Department are materially the same projects that were judged favorably during the project selection process.

4.6 Restructure the private activity bond allocation schedule so that left-over funds are funneled to multi-family use.

This recommendation does not require that the existing set-aside for multi-family use under the private activity bond program be changed in

the Bond Review Board enabling legislation. Rather than increase the set-aside, this recommendation directs all left-over funds in the other categories to go towards multi-family use at the end of the program year. This would have an effect similar to an increase in the set-aside, thus increasing the amount of 4 percent tax credits that the State is eligible to receive.

4.7 Provide the Department with direct allocation authority over a portion of the multi-family bond funds currently distributed through the Bond Review Board lottery.

This recommendation would allow the Department to strategically allocate a portion of the existing multi-family bond set-aside to meet state need. The Department's allocation of private activity bond funds could be coordinated with complimentary programs such as tax credits and HOME. This recommendation would also allow the Department, in certain circumstances, to pool its issuances, thereby decreasing the associated costs. Lastly, to avoid unfair advantage, this recommendation would remove the Department's role in sponsoring any multi-family bond projects in the annual private activity lottery.

4.8 Modify the statutory requirements for 501(c)(3) bonds by removing the overall dollar cap and the requirement that 50 percent of the funds be allocated for new construction.

This recommendation would remove the Bond Review Board's cap for the 501(c)(3) bond program. In addition, it would remove the statutory barriers to the 501(c)(3) bond program's ability to fully function and allow non-profits greater access to this significant source of funds for affordable housing development. This recommendation would give the State a needed resource for the preservation of affordable housing.

Management Action _____

4.9 The Department should publish the final tax credit syndication rates and payment schedules used by projects receiving allocations from the previous year.

This recommendation would require that the Department research and publish what the final rates and schedules were for each tax credit project. This information would inform applying developers of which tax credit syndicators can supply the better rates. This recommendation would encourage developers to shop around for syndication rates, and receive rates that maximize the use of each tax credit dollar.

4.10 Require that all multi-family private activity bond projects with a bond reservation automatically receive their 4 percent tax credit allocation.

This recommendation would help speed up the closing of projects sponsored by the Department and local housing finance corporations. The Department would still underwrite all bond projects to determine the appropriate tax credit allocation amount. The TDHCA Board, however, would no longer be required to vote on the 4 percent allocations.

4.11 Require that the Department study and assess other types of housing finance program options.

The Department should inventory what other states do, and gauge what the Department could do. A report should be made available to the appropriate standing committees of the Legislature no later than February 1, 2001.

Issue 5

The Department Does Not Actively Ensure That Its Programs Provide Fair Access to Housing.

Key Findings

Many tax credit properties use admittance policies that discriminate against low income families.

- The Department does not ensure that all of its programs further fair housing objectives.
- Many tax credit properties use admittance policies that discriminate against Section 8 voucher holders.
- Tax credit properties' use of requirements that exclude persons with Section 8 vouchers makes both the Department and property owners liable to litigation.

Although federal and state laws prohibit housing discrimination in the State's housing-related programs, the Department does not actively ensure that its programs provide fair access to housing. These recommendations would require the Department to adopt policies to prevent discrimination by developers receiving funding through the Department, and establish compliance procedures to identify and sanction discriminatory practices by landlords once projects are built and operational.

Recommendation

Change in Statute

- 5.1 Require the Department to obtain certifications of compliance with anti-discrimination laws by applicants for all housing-related programs.**
- 5.2 Require the Board to establish procedures, in rule, to monitor and enforce compliance with fair housing laws.**

The Department should require all housing-related program applicants to certify compliance with state and federal fair housing laws, including laws protecting people with disabilities from discrimination in obtaining housing. The agency should not fund projects that do not meet this requirement. To implement these two recommendations, the Department would need to develop rules in conjunction with the Texas Commission on Human Rights.

- 5.3 Require the Department to adopt a policy, in rule, that identifies reasonable Section 8 admittance policies for all tax credit properties.**

This recommendation would require the Department to adopt rules for the acceptance of Section 8 vouchers at tax credit properties. These rules should include a reasonable minimum income policy for Section 8 tenants and address other factors that can preclude Section 8 tenants access to tax credit housing.

- 5.4 Require the Department to establish procedures, in rule, to monitor and take action against tax credit properties that, as policy, refuse to accept tenants with Section 8 vouchers.**

This recommendation would increase the Department's role in ensuring that tax credit properties are in compliance with federal rules regarding the acceptance of Section 8 vouchers. This recommendation would have the Department develop a range of sanctions to use against tax credit properties that refuse to accept tenants with Section 8 vouchers.

Management Action

- 5.5 Allow tenants to seek relief from tax credit property landlords if denied housing on the basis of their Section 8 status. Allow tenants seeking relief to be awarded compensation and attorney's fees.**

This recommendation would require that the Department change the land use restriction agreement (LURA) for tax credit properties to allow Section 8 voucher holders to seek relief and attorney's fees if they think that they have been subject to discrimination.

5.6 Require the Department to train all employees on fair housing laws, and maintain at least one employee with experience in fair housing in the Compliance Division.

This requirement would improve employee awareness of the agency's important duty to further fair housing. This would also provide the agency with the necessary expertise to ensure that individuals and entities receiving money from the Department do not discriminate against any protected classes.

Issue 6

The Department Is Not Fulfilling Its Role to Preserve Expiring Affordable Housing Stock.

Key Findings

- The Department allocates few staff resources towards preservation efforts despite its mandate to preserve affordable housing.
- The Department's existing policies do not adequately encourage preservation.

The State needs a policy for preserving at-risk projects. Texas could lose nearly 13 percent of its subsidized rental housing units over the next five years. Many of these units house extremely low income, disabled, and elderly Texans. Thousands of tenants could be left without a home if the units are not kept affordable. Several measures can position the Department so that it would have a dedicated effort to identify housing properties in jeopardy and take steps to protect them to the extent possible. The Department could also adjust its housing finance programs to encourage better preservation in the future.

Recommendation

Change in Statute

- 6.1 Require the Department to create a staff function with the responsibility to develop and implement policies designed to preserve affordable housing.**

The State does little to ensure the preservation of existing affordable housing stock.

Duties would include, but not be limited to, maintaining data on housing at risk of being lost, advising other housing program areas on policies that can enhance preservation strategies, and developing policies that ensure that the Department's existing housing portfolios remain intact.

6.2 Require the Department to establish a minimum 10 percent set-aside from the multi-family allocation process for preservation projects.

A minimum of 10 percent of all tax credit, private activity bond, and 501(c)(3) bond funds should be reserved for preservation purposes. These programs have the financial capacity to work in the preservation of affordable housing. The amount of funds set aside each year for preservation, beyond the required 10 percent, should be determined through the public hearing process. The set-aside is a minimum and will not adequately address the need. However, the requirement is a starting point and will begin a process of ensuring that preservation is a priority for the State.

6.3 Require the Department to establish incentives for longer or permanent affordability periods for multi-family housing.

The key incentive the Department could use would be to give extra points or credits to applications for multi-family housing that propose longer or permanent affordability periods. This would encourage applicants, through a competitive process, to extend the affordability period of proposed projects as long as possible rather than simply meeting a minimum requirement.

Management Action _____

6.4 The Department should establish an Office of Housing Preservation.

This recommendation provides direction as to how the Department should comply with the proposed statutory requirement for a dedicated staff effort for preservation.

6.5 The Department should adopt a policy for the release of an RTC property land use restriction agreement.

The Department needs to identify criteria and procedures for approving the release of Resolution Trust Corporation (RTC) properties from their land use restriction agreements (LURAs). The Department should require the Compliance Division to conduct a comprehensive inspection of each RTC property requesting LURA release. The Preservation Office should then conduct a market assessment for each RTC property

The Department
should establish an
Office of Housing
Preservation.

requesting the release of its LURA. The new policy should also provide for public hearings and Board approval for each proposed LURA release.

Issue 7

The Department Does Not Sufficiently Consider Applicants' Compliance History Before Approving Newly Proposed Projects.

Key Findings

- Allocation decisions made by the Department do not adequately consider the past performance of developers.
- Developers with a history of compliance violations continue to receive additional project awards from the agency.
- Projects are not adequately monitored during construction.
- Program compliance information is scattered throughout the Department and not maintained in a central location that is easily accessible.
- The Credit Underwriting Division does not routinely monitor projects to check the appropriateness of initial recommendations.

Developers with a history of non-compliance can continue to receive additional project awards.

The State may not be receiving the best product for its money by allocating funds to projects that have a greater risk of failure. The Department does not sufficiently consider underwriting and compliance recommendations in allocation decisions or compliance monitoring. Use of compliance and underwriting information, and improved monitoring would help ensure program funds are distributed to the best projects for the State.

Recommendation

Change in Statute

7.1 Require the Board to consider an applicant's compliance history before approving any newly proposed projects.

All projects would be reviewed by Compliance before being sent to the Board for approval. Review must be in the form of a written document that evaluates whether the proposed project meets the Division's compliance criteria. These documents must be kept in the project file to allow auditors to quickly determine that programs are following

established rules. The Board must fully document and disclose any situations where funding was approved despite compliance problems.

Management Action

7.2 Require the Compliance Division to conduct risk-based monitoring of projects during construction.

Compliance should start monitoring programs at the beginning of construction. A risk-based approach should be adopted that focuses more monitoring attention on projects with higher levels of risk. Compliance should use Credit Underwriting Division's findings to help determine the level of risk for each project funded. This would provide for an earlier opportunity to provide technical assistance if a project is encountering difficulties.

7.3 Require the Department to maintain compliance information in a central database.

Compliance information for every program would be maintained in the same database. The database must be easily accessible and provide a complete project compliance history for each applicant/developer. This would provide better monitoring for existing projects and a more thorough risk assessment for each proposed project.

7.4 Require Credit Underwriting to routinely follow up on actual project performance to validate the accuracy of its initial evaluation.

This recommendation would ensure that the Credit Underwriting Division establishes a feedback loop to monitor the actual costs of projects and uses the information to improve its estimates for future projects.

Issue 8

The Department Has Provided Limited Leadership and Initiative in Addressing Colonia Issues.

Key Findings

- The Department does not have a strategic vision to address colonia issues.
- The Department has no formal process for sharing and receiving information with the public about colonia issues and programs.

The Department does not have a strategic vision to address colonia issues.

- The lack of direct funding creates administrative difficulties for managing colonia programs and limits the effectiveness of the programs.
- The operation of the Colonia Self-Help Centers is complicated by conflicting claims of authority and responsibility.

The current Board does not have access to expertise on colonia issues outside the Department and must rely entirely upon Department staff to make policy decisions. Colonia stakeholders express concern that the Department does not support colonia programs beyond the minimum necessary to meet legislative requirements. Some stakeholders are not satisfied with the opportunities for public input on colonia programs. Funding restrictions on colonia programs limit the number of residents served and the types of services provided. The Department has not effectively settled disputes between counties and non-profit organizations over colonia self-help centers, reducing the effectiveness of the centers during their initial years of operation.

Recommendation

Change in Statute _____

8.1 Create a Colonia Advisory Committee to advise the Board on the needs of colonia residents and the effectiveness of Department policies.

The advisory committee should consist of one colonia resident, one representative of a non-profit organization that serves colonia residents, one local government representative, one person to represent private interests in banking or land development, and one public member. All members would be appointed by the Board and, with the exception of the public member, must reside within 100 miles of the Texas-Mexico border.

8.2 Require the Department to develop an annual assessment of colonia resident needs and a biennial action plan to address the needs.

As a part of the statewide needs assessment addressed in Issue 3, the Department should collect information on the demand for contract for deed conversion, self-help housing, consumer education, and other colonia resident services in counties within 100 miles of the Texas-Mexico border. The Office of Colonia Initiatives should prepare a biennial action plan to list policy goals for its colonia programs, the strategies to meet the goals, and the expected outcomes.

Management Action _____

8.3 Require the Department to develop recommendations to the Legislature identifying options to improve the funding system for colonia programs.

The Department should issue a report to the Legislature before January 1, 2003 with proposals for reforming the funding system for programs managed by the Office of Colonia Initiatives. The Department should solicit input on the best use of Department funds from interested stakeholders and address their suggestions in the report.

8.4 Require the Department to improve its management and coordination of the Colonia Self-Help Centers.

The Department should work on behalf of colonia residents to ensure that local governments and non-profit operating organizations are cooperating to meet the needs of the residents. The Department must also improve its efforts to settle differences among contracted entities, to process contracts in a timely manner, and to implement other Department programs through the centers.

Issue 9

The Department Does Not Make Information About Community Resources and Affordable Housing Easily Accessible to the Public.

Key Findings

- The Department has two information offices, but does not function as a clearinghouse for information about affordable housing and community resources.
- The lack of a single source of integrated, user-friendly information may result in public unawareness and confusion about housing and community programs.
- The Department's programs are not included in the Texas Information and Referral Network.
- The agency has shown reluctance to make information available to the public.

Finding user-friendly information about affordable housing and community resources can be confusing and difficult. Despite its role as

The Department does not function as a clearinghouse for information about affordable housing.

the lead housing agency, the Department does not have a central office that functions as a clearinghouse of information. In addition, the Department's programs are not included in resources that direct the public to state agency social services.

Recommendation

Change in Statute

9.1 Require the Texas Department of Housing and Community Affairs to establish a central housing and community services clearinghouse, and clarify the Department's statutory role as an information provider.

The Department should create a central information office by merging the Housing Resource Center with the Local Government Services office. This office should act as a clearinghouse to provide plain-language information to the public, local communities, housing providers, and other interested parties. This office would be responsible for compiling the agency's numerous reports into an integrated form. The office should also maintain a resource listing all existing affordable housing resources in communities. The information should be readily available in hard copies and in a user-friendly format on the Department's Web site. Finally, the office should make its manuals available online, including those currently printed by Local Government Services.

9.2 Require the Health and Human Services Commission to include the Department's programs in Texas Information and Referral Network resources.

The Health and Human Services Commission (HHSC) should include information about the Department's housing and community affairs programs in its I&R Network Resources, including Health and Human Services in Texas: A Reference Guide. The Department must provide HHSC with any necessary information or data.

9.3 Require the Board to adopt, by rule, policies and procedures to ensure agency compliance with the Public Information Act.

This recommendation would ensure that the Department upholds its duties under Public Information Act. As part of this recommendation, the agency should train its employees on Public Information Act requirements, and the Executive Director must ensure that the staff implements these policies and procedures.

Issue 10

Create a New Agency, the Office of Rural Community Affairs, to Administer the Department's CDBG Program.

The Community Development Block Grant (CDBG) program is a federal program that provides over \$80 million annually to Texas counties of fewer than 200,000 people and cities and towns of fewer than 50,000. The funds can be spent on a wide variety of local needs related to economic development. Although historically well-run, the program could play a broader role in rural development with an independent governing Board with expertise in rural issues and commitment to the future of rural Texas.

Recommendation

Change in Statute

10.1 Move CDBG out of TDHCA and constitute it as an independent executive branch agency, the Office of Rural Community Affairs.

This recommendation would transfer the CDBG program to a new agency whose sole mission would be to promote Texas' rural communities. The agency would be governed by a nine-member Board with the Governor, Lieutenant Governor, and Speaker of the House appointing three members each. At least two members appointed by each official should possess strong understanding of and commitment to rural interests. All authority, personnel, and property currently engaged in or allocated to the administration of the CDBG program would be transferred from TDHCA to the new agency.

The Community Development Block Grant program should be transferred to a new agency solely focused on promoting rural Texas.

Issue 11

The Manufactured Housing Regulatory Program Does Not Receive Appropriate Oversight From the Department's Governing Board.

Key Findings

- The manufactured housing regulatory program receives limited oversight from the Department's governing Board.
- The Division is the only licensing and regulatory function at the Department.

The manufactured housing regulatory program is given little focus or attention by the Department's governing Board, and is the only regulatory program in an agency that concentrates on housing finance and community development. A separate Board could focus on the program, while it remains administratively attached to the Department, providing an appropriate level of oversight.

Recommendation

Change in Statute _____

11.1 Retain the manufactured housing regulatory program administratively as a part of TDHCA, with a separate governing Board to manage the program.

This recommendation would provide for a separate Board composed of five members of the public, appointed by the Governor for staggered six-year terms. Funds for manufactured housing regulation would be initially appropriated to TDHCA and then transferred to the manufactured housing function. The newly-created Board would have the authority to set the budget and allocate expenditures to the various manufactured housing regulatory activities. The Board would enter into appropriate interagency agreements with TDHCA to share administrative costs for rent, data processing, human resources, legal, and other services.

Issue 12

Texas Has a Continuing Need for the Services Provided Through the Texas Department of Housing and Community Affairs.

Key Findings

- Texas has a continuing need for affordable housing and community support services.

- Sunset found no benefit from having any other federal, state, local, or private entity perform the functions of the Department.
- Considerable problems exist in how the Board and the Department function, and how services are currently delivered.

The Texas Department of Housing and Community Affairs' mission — to provide funds for affordable housing and community support services — is important to Texans. The rise in poverty, along with a growing shortage of affordable rental housing, has created a housing crisis for many lower income Texans. Long-term projections indicate that future population characteristics will create an even greater demand for affordable and subsidized housing than there is today and the affordable housing crisis will continue and expand. The Sunset review found that, although the Department should continue, concerns identified precluded a recommendation for the usual 12-year extension.

Recommendation

Change in Statute

12.1 Continue the Department for a two-year “probationary” period, and require the Sunset Commission to re-evaluate the agency and its efforts to ensure that needed changes have been implemented before the legislative session in 2003.

TDHCA should be continued for a two-year “probationary” period.

The following criteria should be used to decide whether TDHCA has successfully implemented the recommendations included in this report section.

- Establishment of a functional governing body that values public input and allows Board members to develop the expertise necessary to make informed decisions about and ensure accountability of the Department and its programs.
- Effective development and implementation of a needs assessment and associated fund allocation process that:
 - ensures the State’s most pressing needs are identified and met,
 - incorporates input from local entities,
 - maximizes the objective of preserving the State’s existing affordable housing stock,
 - ensures the State receives the best value for its resources, and

- maximizes the State’s objectives for its housing and community support services.
- Development of policies and procedures that clearly define the appropriate roles of the Board members and agency staff.
- Establishment of compliance procedures that actively ensure the Department’s programs provide fair access to housing.

The Department should be required to report to the Sunset Commission by September 1, 2002, on the status of these recommendations as part of the re-evaluation of the agency during the next interim.

Fiscal Implication Summary _____

Recommendations regarding TDHCA would have a fiscal impact to the State. They are discussed below, followed by a five-year summary chart.

- Issue 1 Reducing the size of the Board would save \$20,000 per year, from reduced travel expenses.
- Issue 2 Requiring consolidation of public hearings would save \$20,000 per year, from reduced travel expenses.
- Issue 3 Requiring enhanced planning efforts would cost \$190,000 per year; resulting from the need for three staff, equipment, and associated travel expenses.
- Issue 4 Restructuring the Private Activity Bond Allocation schedule would increase the amount of 4 percent tax credits available to build affordable housing by an additional \$2.6 million for each one percent increase in bond cap allocation.
- and 7
- Issues 5 Increased responsibilities for underwriting and compliance functions could require additional staff. Costs for additional staff would be offset by an appropriate increase in the project application and/or compliance fee paid by developers who apply and receive funding from the Department.
- Issue 6 Increase preservation efforts would cost \$180,000 per year; resulting from the need for three staff, equipment, and associated travel expenses.
- Issue 9 Requiring the Department to compile integrated reports and improve its response to information requests would cost \$64,500 per year; resulting from an additional person needed to support the Department’s Web site.
- Issue 10 Moving the CDBG Program to a new Office of Rural Community Affairs would have no net fiscal impact to the State. Program funding and associated costs would be transferred from the Department to the new agency.

Fiscal Year	Savings to the General Revenue Fund	Cost to the General Revenue Fund	Savings to Earned Federal Funds	Savings to Appropriated Receipts	Net Cost	Change in FTEs From FY 2001
2002	\$20,000	\$434,500	\$6,000	\$14,000	\$394,500	+2
2003	\$20,000	\$434,500	\$6,000	\$14,000	\$394,500	+2
2004	\$20,000	\$434,500	\$6,000	\$14,000	\$394,500	+2
2005	\$20,000	\$434,500	\$6,000	\$14,000	\$394,500	+2
2006	\$20,000	\$434,500	\$6,000	\$14,000	\$394,500	+2

State Commission on Judicial Conduct



Agency at a Glance

The State Commission on Judicial Conduct (the Commission) exercises jurisdiction over about 3,450 judges and judicial officers. Created by constitutional amendment in 1965, the Commission is a judicial agency whose major function is investigating and taking appropriate action in cases of judicial misconduct or incapacity of judges and judicial officers. Sanctions may include discipline, education, censure, or filing formal proceedings that could result in removal from office.

Key Facts

- **Funding.** The Commission operates with an annual budget of about \$700,000. General revenue supports the agency's entire budget.
- **Staffing.** The Commission employs 15 people, including six attorneys, one investigator, and eight support staff.
- **Jurisdiction.** A total of 3,459 judges fall under the agency's jurisdiction and authority. This includes 98 appellate judges; 408 district judges; 197 statutory county judges; 254 constitutional county judges; 843 justices of the peace; 1,216 municipal judges; 101 associate judges, child support masters, and magistrates; and 342 retired and former judges who are available to sit as visiting judges.
- **Complaints.** In fiscal year 1999, the agency processed 856 complaints, receiving 776 complaints and carrying over 360 complaints from fiscal year 1998. On average, the Commission took 5.2 months to process a case. At the end of fiscal year 1999, 281 cases were pending.
- **Investigations.** Of the 856 complaints processed, the Commission dismissed 781. The agency dismissed 25 percent after initial review, 44 percent after preliminary investigation, and 31 percent after full investigation. In cases where staff performed full investigations, the Commission dismissed 75 percent and ordered disciplinary action in 25 percent.
- **Sanctions.** In fiscal year 1999, the agency ordered a total of 20 public sanctions: seven reprimands, two warnings, and 11 admonitions. The Commission ordered 19 private sanctions: six reprimands, seven warnings, and six admonitions. Six of these private sanctions included orders of additional education. In fiscal year 2000, the agency ordered 22 public sanctions and 22 private sanctions.



Commission Members (11)

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Michael O'Neal, Vice Chair (Dallas)
Kathleen Olivares, Secretary (El Paso)
William G. (Bud) Arnot, III (Eastland)
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Wallace B. Jefferson (San Antonio)
Gilbert M. Martinez (Austin)
Blake Tartt (Houston)

Agency Head

Margaret J. Reaves, Executive Director, (512) 463-5533

Recommendations

- Require the Commission to Better Inform the Public About Its Activities and the Process for Filing a Complaint.
- Enable Complainants to More Meaningfully Participate in the Complaint Process, Without Fear of Retaliation.
- Remove Confidentiality Restrictions that Impede the Commission's Ability to Effectively Oversee Judicial Conduct.
- Provide Feedback to Judicial Training Schools to Better Prevent and Deter Judicial Misconduct.
- Allow Staff to Dismiss Certain Cases Without Commission Approval.
- The Commission Should Review Prohibitions Against Soliciting Certain Funds.

Issue 1

The Commission's Effectiveness Is Limited by Failing to More Broadly Inform the Public of the Commission's Role in Overseeing and Sanctioning Judicial Conduct.

Key Findings

- The absence of clear, understandable information contributes to a lack of awareness and confusion about the process for filing a complaint about a judge.
- Insufficient explanation of complaint dismissals causes the public to feel ignored or disregarded.
- Inadequate publication of sanctions can also contribute to public mistrust in the system.
- Lack of publicity on standards of conduct and sanctions imposed for violations reduces the potential for deterring other judges from similar behavior.

The limited publication of information about the Commission and its activities can make it hard for people to know how to file a complaint and can fail to assure the public that judges who act inappropriately will be sanctioned. While the agency is to be commended for many recent changes to address these concerns, other actions would help the Commission better educate the public to dispel misperceptions and alleviate mistrust in the system, and better deter judicial misconduct.

Many people indicated that information about the Commission is difficult to understand or inaccessible.

Recommendation

Change in Statute

1.1 Require the Commission to provide easily available, plain-language information to the public and judges on what constitutes judicial misconduct, and how to file a complaint.

This recommendation would require the Commission to develop plain-language materials describing the complaint process and the types of sanctions issued by the Commission. The Commission should develop a standard packet, including these materials, to distribute to people who file complaints. The information should be available in both English and Spanish.

Publishing sanctions educates people about the agency's activities, and helps deter judicial misconduct.

The Commission should also adopt a policy to better disseminate this information in the courts and to the Judiciary. This recommendation would allow the Commission to determine the most appropriate method for distributing the printed information before full implementation.

The Commission should also make this information easily available to the general public. The Commission is currently exploring development of a Web site with the Office of Court Administration. A more informative Web site would allow individuals from across the state to obtain information about the Commission and its complaint process, as well as allow judges another option for understanding potential misconduct and the resulting sanctions.

1.2 Require the Commission to provide complainants with an explanation of complaint dismissals.

This recommendation would require the Commission to give specific reasons explaining why a case has been dismissed, rather than simply notifying a complainant of the dismissal. A fuller explanation would help to alleviate any potential mistrust that may develop when complainants are dismissed outright.

1.3 Require a periodic publishing of judicial misconduct sanctions in the *Texas Bar Journal*.

More frequent publication of sanctions would provide more timely notice of Commission actions and give judges more opportunities to see sanctions. The *Bar Journal* would no longer publish the Commission's entire annual report.

Issue 2

The Law Does Not Give a Complainant the Opportunity to Request Confidentiality, Appear Before the Commission, or Have a Complaint Reconsidered.

Key Findings

- While the law protects the confidentiality of judges, it does not provide for the confidentiality of a person who files a complaint against a judge.
- The Commission may ask a judge to appear before it in an informal hearing, but may not ask the person who filed the complaint to attend.

- Unlike judges, people who file complaints do not have a formal right to have their complaints reconsidered.

A person who files a complaint against a judge does not have many of the statutory rights granted to judges. Changes are needed to help reduce the fear of retaliation for people who file complaints against judges, and provide the public with meaningful and equal opportunities to participate in the complaint resolution process.

Many people who had filed a complaint against a judge said they felt left out of the agency's complaint process.

Recommendation

Change in Statute

2.1 Ensure that people who bring complaints against judges have the opportunity to request confidentiality.

This recommendation is intended to protect complainants who fear reprisal from the judge who they complained against, and encourage the public to bring cases without fear of retaliation. To the extent possible, the Commission should protect the confidential complainant. Warnings regarding limitations on a complainant's confidentiality are and should continue to be provided to complainants requesting this accommodation.

2.2 Allow the Commission to invite complainants to appear at informal proceedings.

This recommendation would grant the Commission discretion to invite complainants to its informal hearings, providing complainants with the same access to the Commission that judges have. Commission members would also benefit by having the opportunity to hear more information about a case before making important decisions. The Commission should adopt a policy outlining a procedure to hear from both judges and complainants without compromising confidentiality.

2.3 Codify a complainant's right to request reconsideration of a dismissed complaint.

This recommendation would place in law the Commission's internal policy. Complainants should have one chance for reconsideration if the complainant provides additional evidence of misconduct within 30 days of the date of the dismissal letter. The Commission should also ensure that a reconsidered case receives a full investigation, performed by staff who did not previously review the matter.

Issue 3

Certain Confidentiality Restrictions Impede the Commission's Ability to Effectively Oversee Judicial Conduct.

By law, a formal hearing to discipline a judge does not currently become public until the hearing actually begins.

Key Findings

- While the statute says formal hearings to remove or discipline a judge are open to the public, the proceedings are essentially closed because they do not become public until the hearing actually begins.
- While the Commission has the authority to suspend a judge indicted for a crime, information on suspensions is not made available to the public.
- The statute prohibits the Commission from sharing vital information about judges with certain law enforcement, public officials, the courts, and certain schools, as needed to protect the public.
- Unlike the State Bar, the Commission cannot obtain criminal histories of complainants, judges, or other witnesses material to an investigation of judicial misconduct.

Some of the Commission's confidentiality requirements inappropriately keep certain information from the public and may impede the Commission from effectively investigating judicial conduct.

Recommendation

Change in Statute

3.1 Require that formal hearings to discipline or remove a judge become public when the Commission files formal charges to institute the proceedings.

This recommendation would ensure the public's awareness of these formal hearings ahead of time, instead of when the hearing begins. It would make formal hearings and all related documents public when the Commission files charges, as is the practice in 33 other states.

3.2 Clarify that orders to suspend a judge under criminal indictment shall be public at the time they are issued.

Suspension orders, withdrawals of suspension orders, and documents that are part of the suspension file would become public when they are

issued. This recommendation would allow the Commission to assure the public when a judge under indictment is suspended from duty, pending the resolution of the charges. In addition, the public should be aware of post-suspension hearings, in which a judge must demonstrate that continued service would not impair public confidence in the Judiciary. Likewise, withdrawals of suspension orders should also be public, allowing full disclosure of the resolution of the matter.

3.3 Allow the Commission to share information with certain law enforcement, public officials who appoint judges to the bench, courts, and schools that provide Commission-ordered education, as necessary to protect the public interest.

This recommendation would enable the Commission to protect the public by reporting to the appropriate authority information reasonably suggesting that a criminal act has been, is being, or is about to be committed. It would also allow the Commission to release information verifying a judge’s eligibility to serve on the bench. The Commission would also be able to share enough information with the Supreme Court and judicial schools, to match the judge with appropriate special masters and mentors. The Commission should share only the information necessary for each entity to perform its function.

3.4 Allow the Commission to obtain the criminal history of a judge under investigation, and of a complainant or witness in any Commission investigation.

The general counsel of the State Bar may receive similar information. Like the State Bar, information from the Department of Public Safety would remain confidential, and the Commission would be required to destroy criminal history information after a final determination is made in the case. This recommendation would aid the Commission in its investigations and its formal proceedings by allowing it to better assess the credibility of witnesses and determine the appropriate outcome for the judge.

The Commission should be able to release a judge’s disciplinary record to verify eligibility for further appointments.

Issue 4

By Not Routinely Providing Feedback to Judicial Schools, the Commission Is Missing an Opportunity to Help Prevent Common Types of Misconduct.

Judges often claim to be unaware of acceptable professional behavior.

Key Findings

- Judges are required to obtain initial and ongoing training on their basic duties and responsibilities.
- Many common types of misconduct can be addressed through training, but the Commission does not have a regular means to give judicial schools feedback on those common areas.

The Commission has no means of ensuring that judicial schools have information illustrating the numbers and types of problems that the Commission sees in complaints against judges. As a result, judges may receive incomplete information regarding acceptable professional behavior.

Recommendation

Change in Statute _____

4.1 The Commission should routinely provide judicial schools with information to help ensure that training addresses common problems resulting in sanctions and orders of additional education.

This recommendation would help ensure that training is tailored to address actual problems that result in judicial sanctions or orders of additional education. Because schools focus on different types of judges, the Commission should provide information categorized by type of judge and misconduct. This change should make required training more meaningful to the judges, while helping the Commission to reduce complaints by averting them on the front end.

Issue 5

The Inability of Staff to Dismiss Certain Cases Without Commission Approval Wastes Valuable and Limited Resources.

Key Findings

- The lengthy process of taking even clearly baseless complaints to the full Commission burdens staff, Commission members, and complainants.
- Other state agencies have procedures that allow staff to dismiss complaints.

Although a large number of complaints are baseless or do not even allege judicial misconduct, the agency does not have a procedure that allows staff to administratively dismiss cases without Commission approval. Adopting a policy allowing administrative dismissal would save the Commission time and money, and would speed the resolution time for people who file baseless complaints.

Recommendation

Management Action

5.1 The Commission should adopt a policy to allow staff to administratively dismiss certain cases without Commission member approval.

Commission staff should have the ability to dismiss cases that do not allege misconduct, are moot because a judge has resigned or died, or concern matters for an appellate court. Commission members should feel secure in relying on staff expertise and experience to determine when cases should be dismissed. Checks and balances, such as team leader and Executive Director review, and the right to request reconsideration, would ensure that the agency does not dismiss cases deserving further action. The Commission could also request to review case files and discuss them at a hearing.

Currently, staff must investigate complaints that clearly do not allege misconduct.

Issue 6

The Commission Should Review Prohibitions Against Soliciting Certain Funds.

The Code of Judicial Conduct prohibits judges from soliciting funds for educational, religious, charitable, fraternal, or civic organizations. This provision may hinder some justices of the peace from participating in community activities. The Code of Judicial Conduct, promulgated by the Supreme Court, exempts justices of the peace from some canons of the Code of Judicial Conduct. This recommendation directs the Commission to examine whether similar exemptions should apply regarding certain fundraising activities.

Recommendation

Management Action _____

6.1 The Commission should review whether justices of the peace should be exempt from prohibitions against soliciting certain funds.

The Commission should review whether justices of the peace should be exempt from prohibitions against soliciting funds for educational, religious, charitable, fraternal, or civic organizations, and determine what activities, if any, should be exempt from that prohibition. The agency should report its findings to the Supreme Court of Texas.

Fiscal Implication Summary _____

Only one recommendation regarding the Commission on Judicial Conduct may result in a fiscal impact to the State. The Commission is working with the Office of Court Administration (OCA) to create a new Web site on OCA's server, which should provide the support needed to develop a Commission Web site. Additional costs may also result, but were not estimated for this report section.

Texas Natural Resource Conservation Commission



Agency at a Glance

The Texas Natural Resource Conservation Commission (TNRCC) protects the state's natural resources and human health by ensuring clean air, clean water, and the safe management of waste. The Legislature created the agency in 1993 by consolidating the Texas Water Commission, Texas Air Control Board, and environmental programs from the Texas Department of Health.

The agency's major responsibilities fall into the following categories.

- Implementing state and federal environmental regulatory laws by issuing permits and authorizations for the control of air pollution; the safe operation of water and wastewater facilities, and the treatment, storage, and disposal of hazardous, industrial, and municipal waste and of low-level radioactive waste.
- Ensuring compliance with state and federal environmental laws and regulations by:
 - conducting inspections of regulated facilities;
 - monitoring air and water quality;
 - providing technical assistance;
 - encouraging voluntary compliance; and
 - taking formal enforcement action against suspected violators.
- Developing plans for the cleanup and eventual reclamation of contaminated industrial and abandoned hazardous waste sites.
- Setting water rates and allocating surface water rights.

Key Facts

- **Funding.** Total appropriation for TNRCC for fiscal year 2000 was \$410.7 million. Regulatory fees comprise \$ 327 million, or 79.6 percent, of the agency's budget. Other revenue sources include federal funds of \$50.4 million, or 12.3 percent; General Revenue of \$27.1 million, or 6.6 percent; and other sources, that provide the remaining \$6.2 million, or 1.5 percent.
- **Staffing.** TNRCC has more than 3,000 employees. Most are located at the agency's headquarters in Austin, and 842 are distributed among TNRCC's 16 regional offices.

Texas Natural Resource Conservation Commission



- **Oversight.** TNRCC is governed by a three-member, full-time, paid Commission.
- **Federal Overlay.** One of TNRCC's primary functions is to implement federal environmental regulation in Texas, such as the Clean Air Act and the Clean Water Act. The State has often sought to assume the responsibilities associated with federal requirements to reduce the amount of federal intervention in local issues and to make the regulatory process more efficient.
- **Federal Air Quality Standards.** The Houston-Galveston, Dallas-Fort Worth, El Paso, and Beaumont-Port Arthur areas currently exceed federal air quality standards. TNRCC must prepare long-range plans for reducing air pollutants in these areas, commonly referred to as nonattainment areas or risk reductions in federal transportation funding and limits on economic growth.
- **Water Quality Management.** In Texas, 200 water bodies do not meet state and federal water quality standards. To comply with federal water quality regulations, TNRCC must identify pollutant sources and prepare plans for reducing pollution levels in each impaired water body over a ten-year period.
- **Workload.** TNRCC staff perform a variety of complex tasks to ensure compliance with federal and state regulations and to protect public health and the environment. In fiscal year 2000 the agency issued 843 enforcement orders, performed nearly 68,000 inspections, operated 169 air monitoring stations, conducted 7,799 complaint investigations, and coordinated work on 83 Superfund sites.

Commission Members (3)

Robert Huston, Chair (Austin)

R.B. "Ralph" Marquez (Texas City)

John M. Baker, Jr. (Temple)

Agency Head

Jeff Saitas, Executive Director, (512) 239-3900

Recommendations

- Create a Regulatory Structure for TNRCC Based on Incentives and Performance.
- Require the Commission to Develop a Common Definition of Compliance History and Use This Information in Its Innovative and Regulatory Programs.

Texas Natural Resource Conservation Commission



Recommendations (cont.)

- Use Compliance Performance Information to Ensure Accountability in TNRCC's Innovative Regulatory Programs.
- Use Compliance Performance Information to Guide Agency Policies on Upsets and Inspections.
- Establish a Laboratory Accreditation Program at TNRCC.
- Require TNRCC to Coordinate a Comprehensive Research Effort to Support Its Environmental Regulatory Policies.
- Ensure Greater Public Interest Representation Before the Agency.
- Clarify the Executive Director's Role in Contested Permit Hearings.
- Expand TNRCC Efforts to Investigate and Respond to Complaints.
- Provide TNRCC with Funding Flexibility to Better Support the Agency's Activities.
- Strengthen TNRCC's Revenue Management Practices.
- Require a Written Record of Agency Communications on Regulatory Matters Before the Agency.
- Require the Commission to Review Compliance Performance of Solid Waste Permittees.
- Consolidate Statutory Authority for Regulating Water Treatment Specialists Within TNRCC.
- Require TNRCC to Create Indexes and Cross References to Its Decisions.
- Require Greater Action by TNRCC to Address Environmental Concerns Along the Border with Mexico.
- Improve TNRCC's Technical Assistance to Small Businesses.
- Continue the Texas Natural Resource Conservation Commission for 12 Years.

Issue 1

TNRCC Lacks Strategic Direction and Innovation in Its Regulatory Structure.

Key Findings

- Since its creation, TNRCC has focused on becoming the single environmental regulatory agency envisioned by the Legislature.
- TNRCC primarily operates using the traditional command and control regulatory approach.
- TNRCC’s current organization and approach to regulation have limited development of a strategic vision for environmental regulation.
- The current regulatory approach may be inadequate to solve ongoing environmental problems.

TNRCC has concentrated much of its resources on creating the comprehensive environmental regulatory agency envisioned by the Legislature, to the detriment of a strategic vision for its regulatory structure. As a result, TNRCC continues to rely on a traditional command and control regulatory structure which does not adequately support innovation or flexibility, does not reward performance or provide incentives for regulated entities to improve their performance, and cannot solve persistent environmental problems.

The following recommendations would help TNRCC create a regulatory structure based on incentives and performance. These recommendations would require a coordinated, strategic regulatory structure that would set the foundation for a tiered system that provides incentives for compliance and encourages regulated entities to take action beyond the minimum requirements of their permits.

The traditional command and control regulatory structure cannot solve persistent environmental problems.

Recommendation

Change in Statute

- 1.1 Require the Commission to distinguish regulatory tiers based upon levels of compliance with environmental regulations.**

1.2 Require the Commission to offer incentives within each regulatory tier that are proportional to the levels of compliance.

These recommendations would require the Commission, through rulemaking, to create regulatory tiers that allow entities with better environmental performance, as determined by their compliance with regulations, more opportunity to take advantage of innovative and flexible programs offered by the agency. This regulatory structure should include enough tiers to distinguish among poor performers, entities who generally comply with regulations but may not have perfect records, and consistently high performers who are willing to do more than the minimum required by their permits.

This recommendation would not eliminate the traditional regulatory structure. Instead, the traditional structure would serve as the foundation for a more innovative structure that rewards environmental performance. Regulated entities would still be required to obtain permits, be inspected, and have enforcement actions taken against them, if necessary. However, those entities who prove themselves through consistent compliance with environmental regulations would be able to take advantage of incentive programs. The performance of all entities would be defined as described in Issue 2 of this report section. Also, each performance level should correspond to current and future incentive programs, including those discussed in Issue 3.

To create a level playing field for all regulated entities, this new regulatory structure should be phased in over a period of three years and should be implemented consistent with federal requirements. TNRCC should begin tracking the compliance history of all regulated entities with the intent of using that information to determine what incentive programs each entity is eligible for. Within six months of implementing a compliance tracking system, TNRCC should begin tracking compliance for use in a tiered regulatory system.

1.3 Expand the scope of the Waste Reduction Advisory Committee to advise agency staff and the Commission on the implementation of a regulatory structure based on performance.

This recommendation would expand the Waste Reduction Advisory Committee's current statutory language to include the duty of advising TNRCC on how to create a regulatory structure that is more incentive- and performance-based. This statute, along with the Committee's name, would also need to be adjusted to apply to all media, not just waste. The current size and composition of the committee would remain the same. This recommendation would allow the Committee to use its expertise and creativity to help guide the agency in implementing an

The new regulatory approach would not eliminate the traditional regulatory structure.

innovative regulatory structure. To ensure that the Committee's work is recognized by the Commission and Executive Management, the Committee shall report quarterly on its accomplishments, suggestions, future plans, and other topics it considers important.

1.4 Require the agency to coordinate all regulatory innovation programs and projects through one office.

To ensure all of TNRCC's current and future innovative regulatory programs are consistently implemented, the agency should designate a coordinating office. This office would be responsible for inventorying, coordinating, marketing, and providing technical assistance and public education for all innovative programs, such as regulatory flexibility and environmental audits. Unless appropriate, this office would not administer these programs because most of the programs require technical expertise from the agency's permitting, inspection, enforcement, or legal staff.

In addition to the goals mentioned above, the Committee and coordinating office should help the agency integrate the concepts of regulatory innovation and incentive- and performance-based regulation into its operations, including program administration, strategic planning, and staff training. Innovation should not be confined to one office or one program, but should be a consideration in all of the agency's processes.

Management Action _____

1.5 Encourage the use of environmental management systems and expand opportunities for public participation.

TNRCC should encourage regulated entities to develop environmental management systems as a measure of their commitment to compliance with environmental regulations and to natural resource conservation. Entities in the upper tier of the structure should be required to have a management system while those in lower tiers could develop a management system to help them move to the next level. To accomplish this recommendation, TNRCC should expand its current environmental management system program to all regions and advertise the benefits to regulated entities.

To improve accountability of TNRCC's environmental management system program, the agency should increase opportunities for public participation in the program. While many options exist to accomplish this goal, TNRCC should implement one that fits the needs of the agency as well as the regulated community and the public.

An environmental management system provides procedures for evaluating the environmental performance of a regulated facility.

Issue 2

Compliance History Is Inconsistently Defined and Applied, Limiting Its Use as a Permitting and Enforcement Tool.

Key Findings

- The Legislature and TNRCC have recognized the importance of holding regulated entities accountable.
- The agency does not comprehensively assess the performance of regulated entities and ultimately its own performance.
- A better approach to compliance history would allow TNRCC to use innovative regulatory schemes currently employed by other states.

Without a common approach to assess compliance history, the agency is less able to hold entities accountable within existing permit and enforcement guidelines.

Statutory provisions, rules, and policies vary when describing compliance history among agency functions and its air, water, and waste programs. What constitutes compliance history is not clearly defined and how it is used varies. The agency is less able to assess its job of protecting the environment without a comprehensive assessment of the regulated community's compliance performance. The agency is also less able to hold these entities accountable within existing permit and enforcement guidelines, and within new regulatory structures that provide incentives to exceed minimum regulatory expectations.

Providing a common definition of compliance history would enable the agency to track performance of regulated entities across all programs and agency functions for permitting, inspection, and enforcement. Using a performance assessment to determine eligibility for innovative programs would allow the agency to ensure greater accountability by regulated entities. Regulated entities would be encouraged and motivated to strive for high environmental performance to receive regulatory flexibility. Using compliance history information in deciding permitting and enforcement matters would provide consistency across media and predictability of results for the public and the regulated community.

Recommendation

Change in Statute

- 2.1 Require the Commission to develop a common definition for compliance history.**

Through rulemaking, the Commission would develop a common definition for compliance history for all media — air, water, and waste — to be consistently applied in permitting and enforcement matters. This recommendation would require existing statutory provisions that guide TNRCC’s use of compliance histories in permitting decisions to be examined, and if necessary, changed to allow a common definition to be applied.

In making this definition, the Commission should consider, but not be limited to, including notices of violations and enforcement, state and federal enforcement orders, court judgments, and criminal convictions. The Commission would determine the time period for actions considered part of a compliance history and distinguish between significant and minor violations. The Commission would also need to specify that repeat violators are those with the same or similar violations within the time frame established. The Commission would also determine whether to include as part of the compliance history an entity’s past performance in Texas, or to also include an entity’s compliance record in other states for similar operations. The Commission must also have the means to consider changes in ownership when tracking the compliance history of regulated entities. The Commission would need to adopt the definition of compliance history by March 1, 2002 to support the phased implementation of a tiered regulatory structure recommended in Issue 1 of this report section.

The Commission
would be required to
define compliance
history, subject to
statutory guidelines.

2.2 Require TNRCC to track and report the compliance history of all regulated entities.

The agency would track and report compliance history data on all regulated entities to differentiate the compliance performance levels of regulated entities, and to allow adjustments in agency compliance and enforcement efforts. The agency would track the number of regulated entities in compliance, and in noncompliance, based on annual compliance inspections and whether violations are significant or minor, as defined by the Commission. The data collected would also include the number and percentage of all violations committed by repeat violators and the number and percentage of enforcement orders issued to entities that have prior orders. Finally, the agency would conduct a comparative analysis of the data on how well the agency and regulated entities are performing from one year to the next. The agency would report the compliance data and comparative analysis by region and media in its annual enforcement report.

2.3 Require TNRCC to develop a performance assessment for regulated entities to determine eligibility for innovative programs and to establish permit and enforcement guidelines.

The performance assessment would be used to determine eligibility for incentive-based programs and services.

The Commission would develop a performance assessment that differentiates regulated entities based on compliance performance. The agency would use this assessment, in conjunction with the new regulatory structure discussed in Issue 1, to determine eligibility for participation in agency programs and services such as regulatory flexibility, flexible permits, or other incentive-based programs. This recommendation would not change the statutory direction on the use of compliance history in the environmental audit program. The Commission should determine how to assess the performance of regulated entities that are not routinely inspected for compliance. For instance, the Commission could require an entity to undergo a compliance inspection to determine eligibility for participation in programs or initiatives that require a higher degree of compliance.

The Commission would also determine how compliance history should be used in its existing permitting and enforcement matters by developing guidelines. The Commission should use the information about the performance of regulated entities to guide its decisions to issue or deny permits and to guide the enforcement action taken against violators.

Issue 3

Participation in TNRCC's Innovative Regulatory Programs Is Not Performance-Based and Lacks Sufficient Accountability.

Key Findings

- TNRCC offers regulated entities innovative programs within its predominantly traditional regulatory structure.
- TNRCC does not adequately hold participants in innovative regulatory programs accountable for their compliance performance.
- Despite legislative interest in creating innovative regulatory programs, these programs are not having their intended impact.

While TNRCC offers regulated entities several innovative regulatory programs, they lack sufficient accountability and impact. Eligibility requirements for the programs are inconsistent and lenient, allowing all but those with the worst compliance histories to participate. Further, few regulated entities participate because the programs are complex, and the public mistrusts them because the agency has not implemented proper controls.

The Sunset review identified several recommendations to ensure that innovative regulatory programs are accountable. By holding participants to a higher standard of environmental performance, TNRCC and the public will have more assurance that regulated entities are not gaining unjustified benefits. Greater marketing, public education, and technical assistance efforts will increase understanding of the programs and result in higher levels of participation.

Recommendation

Change in Statute

3.1 Require TNRCC to use compliance performance when determining eligibility for participation in its innovative regulatory programs.

This recommendation would require the Commission to apply the following performance standards.

- Prohibit entities with an unacceptable compliance history from participating in innovative regulatory programs.
- Require entities participating in the regulatory flexibility program to demonstrate that they would exceed environmental performance standards to participate.
- Require entities participating in the flexible permit program to have a better-than-average environmental compliance performance, compared to those entities who receive a standard permit.

This recommendation would provide specific statutory guidance for eligibility in the agency's innovative regulatory programs, those programs that depart from the agency's current permitting, inspection, or enforcement practices. The recommendation would require the agency to consider an entity's compliance performance for participation in innovative programs under a framework provided in Issues 1 and 2 of this report section. Entities would then have an incentive to implement innovative projects that exceed basic expectations currently established through permitting and enforcement requirements. At the same time, they would remain accountable to meeting the basic environmental protection goals that traditional regulatory requirements impose.

3.2 Require entities to show a clear environmental benefit to participate in the agency's regulatory flexibility program.

Specifically, this recommendation would require projects performed as part of regulatory flexibility orders to have a clear environmental benefit.

Eligibility for Supplemental Environmental Projects would not be limited because of the entity's compliance history.

This recommendation would not preclude participants in the regulatory flexibility program from benefitting directly from their participation, but would require documentable benefits to the quality of the environment before the project could be approved.

3.3 Prohibit supplemental environmental projects that the entity has already agreed to perform under a pre-existing agreement with a governmental agency.

This recommendation would limit an entity's ability to participate in a supplemental environmental project (SEP), but not because of the entity's compliance history. SEPs, as a means to direct fines assessed for violations toward environmentally beneficial projects instead of being paid to the General Revenue Fund, are only useful to entities with compliance problems.

Management Action

3.4 Expand marketing, public education, and technical assistance for TNRCC's innovative regulatory programs.

TNRCC should use available resources, such as its Web site, publications, and trade fairs, to market innovative programs, provide technical assistance to regulated entities, and educate the public on their use. These efforts should focus on the performance level needed to participate and the accountability measures within the programs. Publications regarding these programs should be geared toward the general public, as well as regulated entities, using plain language to describe their requirements. This recommendation should be implemented in conjunction with Issue 1 of this report section to create a coordinating office to oversee the development of a regulatory structure that better supports innovative environmental regulation.

3.5 Improve accountability and controls for supplemental environmental projects and publish staff precedents and interpretations for innovative regulatory programs.

This recommendation encourages SEP participants to use third-party agreements as often as possible. The agency has already developed a number of these agreements which allow SEP participants to give their SEP money to a third party, such as the Nature Conservancy or a local government-sponsored environmental project, rather than developing their own projects. In addition, TNRCC should develop a third-party agreement with the Texas Parks and Wildlife Department or other state agencies with responsibilities to protect the environment. These agreements should always be governed by contracts approved ahead

of time by the Commission, as is current practice. TNRCC should also improve controls in the SEP program by conducting site visits whenever possible to verify completion and benefit of projects.

TNRCC would inform the regulated community and the public regularly regarding any precedent or interpretations set by staff for the implementation or administration of innovative regulatory programs. For example, staff should publish a notice through its Web site or an appropriate newsletter of its decisions, such as only allowing immunity to entities that disclose a violation through the environmental audit program within six months of the end of an audit. The agency should also use these forums to clarify how an entity may be denied immunity based on poor compliance history.

3.6 Expand opportunities for public participation within innovative regulatory programs.

This recommendation would encourage TNRCC to find more ways for the public to participate in its innovative regulatory programs. Since these programs offer an alternative to traditional regulatory processes, greater public participation is a key to ensuring accountability. Although this recommendation is not intended to prescribe exactly how TNRCC should increase participation, several options for accomplishing this goal are available. For example, to receive a waiver from environmental regulations, some states require applicants to hold meetings with interested parties to explain their innovative approaches and to answer questions. Other states require regulated entities to develop lists of interested parties as part of their applications for innovative programs. An entity then must involve these parties in its application process.

Greater public participation in alternative regulatory processes is key to ensuring accountability.

I

ssue 4

Agency Policies on Upsets and Inspections Are Not Based on the Performance of a Regulated Entity.

Key Findings

- Agency policies and rules, which continue to be refined, define how it will conduct inspections and approach unplanned air emissions.
- A lack of information or analysis regarding inspections and upsets hurts the agency’s ability to make cost effective decisions about inspections, or to ensure compliance with permit requirements.

The agency has defined approaches to field inspections through division level policy, and rules for unauthorized air emissions resulting from upsets. TNRCC does not track whether inspections are announced or

unannounced, limiting the agency's ability to assess the impact of its policy of conducting announced inspections, or whether it complies with its own policy of conducting unannounced inspections for repeat offenders. Also, an evaluation of companies with chronic upsets found many never receive an inspection while others may be able to avoid permit limitations on air emissions.

The Sunset review identified recommendations that would hold regulated entities accountable for their compliance performance. In the case of inspections, entities would have to demonstrate a good compliance history to continue receiving announced annual compliance inspections. Tracking inspections, by announced versus unannounced, would allow the agency to see whether compliance performance guides the type of inspection performed.

Recommendation

Change in Statute _____

4.1 Require regulated entities to demonstrate a good compliance history before receiving announced inspections.

4.2 Require the agency to track whether inspections are announced or unannounced.

These recommendations would require the agency to offer announced annual compliance inspections as privileges to be earned based on an entity's compliance performance. The agency would use an entity's performance assessment, as discussed in Issue 2, to determine eligibility for announced inspections. The recommendation would not change existing agency policy concerning the use of unannounced inspections for repeat violators, enforcement follow-ups, or in cases where the agency determines a facility is willfully violating the law. The agency would be required to track the use of announced and unannounced inspections to ensure that inspections are conducted according to an entity's compliance performance, and according to the agency's own policy.

4.3 Require the agency to track and report the occurrences of all upset emissions.

This recommendation would require the agency to centrally track all maintenance and unplanned upset events. The information tracked should include the facility reporting the event, number of upsets by region, the type and estimated amount of pollutants emitted, the date and time the event occurred, the reason for the upset, the duration of the event, and any exemptions, inspections, or enforcement actions

Announced inspections would be a privilege earned based on compliance performance.

taken in response to the event. The agency should provide an assessment of this information in its statutorily required annual enforcement report.

4.4 Limit exemptions from possible enforcement for entities with chronic numbers of upsets.

This recommendation would require the agency to evaluate regulated entities with high numbers of unplanned upsets, and set a limit on the number of upsets that can occur before the agency can consider taking an enforcement action. The Commission, through rules, would set the allowable number of upsets that can occur each year and establish exceptions for events that occurred for documentable safety reasons. In adopting its rules, the Commission should consider, but not be limited to, the frequency of the upset, the exact source of the upset at a facility, the magnitude of the upset, and the volume and toxicity of the upset. An entity that exceeds any established limit would no longer be exempt from emission limits and could be subject to enforcement.

Management Action _____

4.5 Companies with high numbers of upsets should be subject to more frequent inspections.

This recommendation would require TNRCC to examine entities with a high number of upsets to determine if the entity's permit needs to be changed or if the facility should be inspected more frequently or limited in its ability to use the upset rule to avoid enforcement action. The agency should determine the number of upset events that may occur before a company would be subject to these actions, such as more frequent inspections. Inspections ordered as a result of the high number of upsets should include evaluating the corrective actions the facility has taken to reduce the number of unplanned upsets, as a way to assess why the number of upsets is so high.

Issue 5

Unregulated Environmental Laboratories Place TNRCC at Greater Risk of Basing Regulatory Decisions on Unreliable Data.

Key Findings

- Oversight of environmental labs providing data to the State is inconsistent and divided between agencies.

- Unregulated, unaccredited labs are more likely to produce inaccurate data for agency decisionmaking, resulting in increased risk to public health and the environment, and increased agency costs.
- Uniform standards provided by a national accreditation program would allow Texas labs to effectively compete with accredited labs in other states.

TNRCC is not authorized to regulate the labs that produce data used to demonstrate compliance with federal and state environmental laws. Confidence in the data generated from laboratories can be enhanced through an accreditation program. The National Environmental Laboratory Accreditation Conference, a voluntary association of state and federal agencies, has developed national standards and an accreditation process that states may adopt and implement.

TNRCC would be given authority to adopt and implement the National Environmental Laboratory Accreditation Program. The accreditation program would be voluntary for commercial labs, allowing market competition and reciprocity to serve as incentives for participation in the program. However, to ensure the reliability of the data on which TNRCC relies for its decisionmaking, the agency would be required to accept only data from accredited labs, with the exception of data generated from on-site or in-house labs.

Recommendation

Change in Statute _____

5.1 Require TNRCC to adopt rules to implement a voluntary environmental laboratory accreditation program consistent with national standards.

The agency would establish by rule a program to accredit environmental laboratories, including TNRCC labs. The program should be consistent with the national accreditation standards approved by the National Environmental Laboratory Accreditation Conference (NELAC). The accreditation program would serve to ensure that environmental laboratories provide sufficiently accurate and consistent measurements and analyses.

Consistent with NELAC requirements for reciprocity, TNRCC should provide, by rule, for the accreditation of environmental laboratories accredited by NELAC-approved authorities in other states. TNRCC should also establish, by rule, conditions for denying, revoking, suspending, or modifying accreditation.

5.2 Transfer the Safe Drinking Water Lab Assessment Program from the Texas Department of Health to consolidate it with the new accreditation program at TNRCC.

This recommendation would transfer authority from the Texas Department of Health (TDH) for the Safe Drinking Water Act laboratory certification program and all related employees and resources to TNRCC. Consistent with federal requirements, labs performing analyses under the Safe Drinking Water Act would continue to be subject to mandatory accreditation.

5.3 Require TNRCC to only accept data and analyses from accredited labs for all decisions affecting permitting, compliance, enforcement, and corrective action.

The environmental laboratory accreditation program would be voluntary for all labs. Only those labs providing data to TNRCC would be required to first obtain accreditation. Environmental labs that do not provide information to TNRCC would not be required to be accredited, but could do so on a voluntary basis. To give interested labs time to obtain accreditation, the accreditation requirement for labs providing data and analysis to TNRCC would become effective three years from the date that the State's program is approved by NELAC.

Labs at a regulated facility would be exempt from accreditation if they are inspected under the facility's general operating permit.

5.4 Exempt on-site or in-house labs from the accreditation requirement.

This recommendation would not require on-site or in-house labs, located at a regulated facility, to be accredited if TNRCC can assure that these labs are inspected as part of the agency's compliance inspection program for the facility's general operating permit.

5.5 Authorize the agency to assess laboratory accreditation fees sufficient to recover program administration costs.

The agency would be authorized to adopt rules establishing a schedule of reasonable fees to be paid by any laboratory applying for accreditation. The schedule of fees would be designed to recover the cost associated with accreditation. Funds received would be deposited in a fund maintained by the agency, which would be appropriated to the agency to offset the costs of the program. Any balance in excess of \$1,000 remaining at the end of the fiscal year would lapse to the General Revenue Fund.

Fees would include reimbursement to the State for all costs associated with a routine assessment or follow-up inspection. This would include

staff expenses resulting from time spent reviewing an application and preparing for inspection, travel to and from a laboratory, inspection of a laboratory, report preparation, and necessary travel expenses.

Issue 6

State Environmental Regulation Lacks the Benefit of Comprehensive Research on the Long-Term Impacts of Pollution.

Key Findings

- TNRCC performs environmental monitoring and risk assessments, and is involved in independent research efforts.
- Monitoring and risk assessments are insufficient to draw conclusions about long-term impacts of pollutants on human health and the environment.
- Other states have implemented comprehensive research programs to support environmental regulatory efforts.

The application of science-based understanding of pollutants, and their long-term impacts on human health and the environment, to regulatory policies would result in more cost-effective regulation for the State and regulated entities. Currently, this understanding is being gained through environmental research performed by local governments, universities, private industry, and nonprofit organizations. However, State involvement in these efforts is not consistent. Without state coordination and participation in developing environmental research, these efforts are of limited value to the State in planning for future environmental regulatory issues, or assessing the long-term impacts of pollution on human health and the environment.

This recommendation would assist in ensuring that the State's environmental research priorities are addressed, and that sound, scientific findings are incorporated into the State's environmental regulatory policies.

Without coordinated environmental research, the State has difficulty planning for environmental regulatory issues or assessing the impacts of pollution.

Recommendation

Change in Statute

- 6.1 Require TNRCC to coordinate and facilitate agency research needs and efforts.**

Through a new position or division, the agency would coordinate or relate practical regulatory needs to the scientific and academic communities, and explore private and federal funding opportunities. If funding is appropriated, TNRCC would be authorized to direct and facilitate research based on the agency’s needs through the administration of grants or contracts with state universities.

TNRCC would be authorized to use an advisory board to ensure that appropriate incentives are in place for entities to participate and provide input regarding research topics that are specific to Texas.. The advisory board would include representatives of the regulated community, at-large public representatives, and academics.

TNRCC would base its research effort on the existing model used by the Texas Department of Transportation to identify and fund research projects. This model provides for the agency to work with representatives of universities, industry, and the appropriate federal agencies to develop long-range research plans and to identify and pursue specific areas of study. TNRCC would be specifically authorized to use the research expertise of universities, the U.S. Department of Agriculture and other state agencies to limit the reliance on research conducted by permit applicants. Based on these identified research needs, requests for proposal would be developed for the agency to issue.

TNRCC’s research effort should be modeled after the approach by the Texas Department of Transportation to identify and fund research projects.

In addition, TNRCC would be required to coordinate any research activity with other existing state initiatives, and work with universities and the Higher Education Coordinating Board. This recommendation would not authorize the agency to direct or establish research efforts of others. The agency would also explore funding opportunities to support the Texas Department of Health in fulfilling its statutory mandate to conduct toxicological and epidemiological investigations of human illnesses resulting from environmental exposures.

6.2 Require TNRCC to report to the Legislature on its ongoing research efforts and outcomes.

The report would be part of TNRCC’s existing annual report and would describe any cooperative efforts; show funds spent; and track the purpose, results, and implementation of any research conducted.

Issue 7

The Public’s Interest Is Not Adequately Supported in Agency Policymaking.

Key Findings

- The nature of environmental regulation requires careful consideration of the public's interest in agency decisions.
- The representation of the public interest in environmental matters lacks adequate resources and does not reflect comparable efforts in the regulation of utilities and insurance.
- The public's interest is at a disadvantage on many advisory committees and informal stakeholder groups, and in the agency's internal guidance process.

These recommendations would provide greater assurance that the public's interest is represented before the Commission. The recommendation to strengthen the Office of Public Interest Counsel reflects the Legislature's intent in creating the office. The recommendations regarding stakeholder groups would provide for open communication between the agency and the public, and also apply current state law to informal workgroups and task forces, which often have a hand in setting far-reaching State policy.

Recommendation

Change in Statute

7.1 Strengthen the Office of Public Interest Counsel.

This recommendation would strengthen the Office by authorizing the Public Interest Counsel to use technical support outside of the agency where the potential for conflict exists between it and the Executive Director. Additional costs incurred by the Public Interest Counsel for outside technical support would be capped at \$100,000 per year.

Allowing the Public Interest Counsel to obtain outside technical support would ensure that it has the ability to get information needed to make independent decisions, without creating a full-time technical staff devoted solely to this Office. In addition, the Public Interest Counsel would be authorized to recommend needed legislative and regulatory changes.

7.2 Require the agency to track and report the composition and use of Commission-appointed and staff-level advisory committees, workgroups, and task forces.

This recommendation would require the Executive Director to monitor the composition and use of formal and informal stakeholder groups. The recommendation would not require an additional legislative report,

Using outside technical support would enable the Public Interest Counsel to operate more independently.

but rather would require the agency to post the composition of all advisory committees, workgroups, and task forces in a manner that is easily accessible to members of the general public, such as on the agency's Web site.

7.3 Require advisory committees, workgroups, and task forces to be composed of balanced representation of affected stakeholders.

This recommendation would require the agency to identify affected stakeholders for advisory committees, workgroups, and task forces. Because in some cases agency staff appropriately meet with members representing a specific interest, this recommendation would not require equal numbers of interest group representatives on all committees, workgroups, and task forces. In addition, this recommendation would not allow a rule or other Commission action to be challenged based on the composition of a stakeholder group, nor would it require the Commission to ensure that all invited participants attend scheduled meetings.

Management Action _____

7.4 TNRCC should use the Internet and other means to promote public participation and access to agency information.

The agency's widely used Web site provides an opportunity for public participation and access to agency activities. The Commission should continue its commitment to using the Internet to provide information to the public. Specifically, the agency would be required to post on its Web site rule interpretations for all media in an easily accessible format, all third-party supplemental environmental project agreements, and the Executive Director's agenda. The agency would also be required to make more of its Web content available in Spanish. In addition, the agency should broadcast Commission meetings and explore the possibility of broadcasting key advisory group meetings on the Internet. Finally, the recommendation would require TNRCC to provide written notice to complainants regarding investigation results.

The Commission should use its Web site to post rule interpretations and to broadcast its meetings.

Issue 8

Having the Agency as an Advocate for Contested Permits Contributes to a Perception of Unfairness in the Decisionmaking Process.

Key Findings

- The Executive Director's role in contested cases makes the staff an advocate for permit applications, raising questions about the fairness and objectivity of the decisionmaking process.
- State law provides for public participation in TNRCC permitting decisions.
- Statutory notice requirements are confusing for the agency and the regulated community.

As an advocate in contested permit cases, TNRCC staff gives the impression of working against the interests of permit protestants.

As permit writer and advocate for the permit in contested cases, the staff gives the impression of working against the interests of permit protestants and swaying permitting decisions in favor of the applicants. Removing the Executive Director as a party in certain contested cases would allow the agency to focus on providing objective, technical information necessary for making informed decisions.

Public notice and the opportunity for a hearing allow the general public and affected parties to raise their concerns for Commission consideration on permit applications. Consolidating notice provisions in one statute would allow permit applicants and the public to better locate and understand when and how public notice is to be provided. Further, bringing notice provisions under one statute could serve as the basis for future legislative efforts to provide greater consistency and remove redundant requirements.

Recommendation

Change in Statute

8.1 Require the Commission to adopt rules and policies for determining the Executive Director's role in contested permit hearings.

This recommendation would allow the Executive Director to be a party in contested permit hearings and would specify the Executive Director's role as a party with respect to completing the record. The Commission would be required to adopt policies specifying the factors the Executive Director shall consider in determining, on a case-by-case basis, whether to be a party in a contested case. However, the Executive Director would be prohibited from rehabilitating non-agency witnesses. Commission rules must determine when the Executive Director can assist permit applicants in meeting their burden of proof.

8.2 Consolidate permit notice requirements in one statute.

This recommendation would consolidate all notice requirements in Chapter 5 of the Texas Water Code. Because different activities have varying potential impacts on public health and the environment, the recommendation would not change existing notice requirements.

Issue 9

TNRCC Has Not Taken Advantage of Using the Public in Its Compliance Efforts.

Key Findings

- TNRCC's compliance process involves activities in which the public plays a role, including reporting complaints and commenting on enforcement actions.
- Commission practices and policies limit the collection and use of complaints made by the public.

TNRCC relies on public participation in its compliance and enforcement processes by investigating citizen complaints and allowing public comment on enforcement actions. While the agency places a priority on efficiently processing citizen complaints, the agency's policies limit its response to many complaints.

Recommendation

Change in Statute

9.1 Require the agency to enhance coordination of complaint investigations with local officials.

This recommendation would require TNRCC to share complaint information with local officials, and provide training to local enforcement officials. Training would, at a minimum, include procedures for addressing citizen complaints if TNRCC is unavailable or unable to respond, and an explanation of local government enforcement authority under state laws and rules. This recommendation would authorize TNRCC to require participating local governments to share the costs of training. This recommendation would allow local officials to investigate complaints that TNRCC is not able to investigate in a timely manner.

Having policies to respond to complaints after business hours would not require around-the-clock coverage.

9.2 Require the agency to implement policies to respond to complaints after normal business hours.

This recommendation would require the agency to implement a policy allowing field inspectors to work flexible schedules. This recommendation

would not require around-the-clock coverage in all areas of the state, or authorize the additional use of overtime.

9.3 Require the Commission to implement policies allowing a complainant to collect credible evidence for use by the Commission in enforcement actions.

The Commission could base an enforcement action on citizen-gathered evidence if it would suffice in a judicial proceeding.

This recommendation would require the Commission to implement policies, based on Texas Rules of Evidence, to allow enforcement actions to be taken based on credible citizen-gathered evidence. The recommendation would authorize, but not require, the Commission to base an enforcement action on evidence from citizens, if the evidence would suffice in a judicial proceeding. A citizen who submits evidence on which the Commission relies for all or part of an enforcement case, could be required to testify in an enforcement proceeding and would be subject to all available sanctions for falsifying evidence.

TNRCC staff would have the discretion to evaluate the value and credibility of evidence and the merits of any particular enforcement case. TNRCC would be authorized to develop criteria for credibility and use of external evidence to protect the validity of the process. Any criteria developed by TNRCC should be similar to chain of custody procedures currently used by staff. In addition, TNRCC would be required to establish a process for educating the public about the complaint process to enable the public to gather credible evidence of environmental problems. Efforts should include an informational brochure outlining standards for collecting evidence and explaining agency complaint procedures and policies.

Issue 10

TNRCC's Funding Structure Does Not Appropriately Support the Agency's Activities.

Key Findings

- TNRCC's funding structure lacks flexibility to expand innovative services that benefit the regulated community, stability to adequately fund required regulatory programs, and the ability to provide equity in fee costs among all payers.
- TNRCC's administrative costs could be reduced by simplifying its complex fee structure.

The State relies on TNRCC, and the fee system it administers, to support regulatory activities that protect the environment. The agency needs a high quality revenue system that is stable, equitable, accountable, fairly

administered, and flexible to help accommodate innovative regulatory approaches. This recommendation would provide needed funding flexibility to administer the agency's programs. In addition, several options were forwarded to the Legislature for its consideration to help ensure the fee system is more equitable between payers and to help improve administrative efficiencies.

Funding flexibility would help accommodate innovative regulatory approaches.

Recommendation

Change in Statute

10.1 Authorize a ratio of transferability to be set biennially through the appropriations process in the same way as for other state agencies.

This recommendation would authorize the Legislature to designate a certain ratio of funding transferability for TNRCC. This authority would be similar to the authority the Legislature already exercises for other state agencies. The recommendation would not limit how the agency could use this ability to transfer funds from one activity to another. Whatever action is taken through the appropriations process would define TNRCC's ability to transfer funds, specifically whether the agency may transfer funds between programs for different media.

Funding Alternatives

10.2 Reauthorize the collection of the Petroleum Storage Tank Remediation fee, at a lower level, to pay for petroleum storage regulations.

This provision would continue the collection of the Petroleum Storage Tank Remediation fee beyond its currently scheduled March 2002 expiration date, and expand its use for petroleum storage tank regulations. This fee is based on bulk delivery of regulated substances, such as fuel, to storage tanks and is currently collected at a rate of 0.9 cents per gallon, producing almost \$157 million in annual revenue. The fee would be set at a level to ensure that the State can meet the continuing need for above and underground petroleum storage tank regulation, and the additional costs of corrective actions over a five-year period.

Continuing the Petroleum Storage Tank Remediation fee beyond its scheduled expiration date would pay for the continuing need for regulations.

The fee would be renamed the Petroleum Storage Tank fee, and be collected at a rate to bring in \$34 million annually for the next five years, a reduction of \$122 million from current annual collections. To accomplish this rate of collection, the Legislature would set the fee rate at approximately 0.2 cents, down from the 0.9 cents per gallon, currently in statute.

This \$34 million annual collection would support three basic activities related to petroleum storage tanks. First, it would provide almost \$7 million annually to support the State Lead Petroleum Storage Tank program required by the federal government. Second, it would provide \$24 million to support remediation of abandoned sites and sites with no identified responsible party. After five years, when existing remediation needs have been addressed, the fee could be reduced still further – to a level of \$10 million annually – to cover just the continuing costs of regulation. The third activity supported by this expanded fee is to provide \$3 million to cover the cost of regulating underground storage tanks. The separate Underground Storage Tank fee, which brought in about \$3 million in 1999 to pay for these regulations, would be abolished.

The Comptroller of Public Accounts currently has a cost effective method of collecting these funds and would continue to do so. Because the Petroleum Storage Tank fee is based on the delivery of fuel and other regulated substances to storage tanks, and deliveries can only be made to tanks that are registered with the State, the fee would be appropriately assessed on payers who are required to register.

10.3 Require Solid Waste Disposal fee payers to select no more than two reporting methods for calculating fee revenues paid to the State.

This provision would require the owners of solid waste disposal facilities to choose a more limited set of waste disposal reporting calculations for a period of one year, or four quarterly reporting periods. This provision does not change the current reporting calculations existing in law, and allows payers to choose from the full range every year. Payers who cannot meet this requirement would be allowed to use up to one additional reporting calculation method, with agency approval.

10.4 Adjust the Air Inspection fee for inflation and modify the fee to provide a stable base of funding to supplement declining Air Emissions fees.

This change would require adjusting the fee for inflation, using a 3 percent inflation rate for the last eight years would provide an additional \$1 million in revenues.

In addition to modifying the fee for inflation, this alternative could also modify the fee in one or more of the following ways:

- adjust the rate,
- expand the types of businesses covered under the fee to include approximately 20 new types of business,

A 3 percent inflation factor for Air Inspection fee could raise an additional \$1 million annually in revenues.

- require all regulated air accounts to pay the inspection fee, or
- authorize the fee to be used for Title V activities.

The amount of revenues generated could be significant, ranging from approximately \$10 million to \$30 million annually. By increasing the role of the inspections fee as a funding mechanism, the State could help to stabilize air program revenues to ensure that it can meet the continuing need to regulate air emissions, and meet federal clean air requirements.

10.5 Adjust the Air Emissions fee for inflation and modify the fee to more equitably distribute costs between large and small payers.

This change would require adjusting the fee for inflation. For example, by adding \$1 to the current rate of \$26 per ton, an additional \$1.1 million in annual revenues could be raised.

In addition to modifying the fee for inflation, the Legislature could also modify the fee in one or more of the following ways:

- raise the 4,000 ton cap on the Air Emission fee,
- add a surcharge to emissions above the current cap, or
- remove the cap and create a progressive fee rate per ton of emissions.

The revenues generated could be significant depending on implementation. Currently 1.1 million tons of emissions above the cap are not subject to the fee. Adding a surcharge of \$2 per ton above the cap would raise an additional \$2.2 million per year. The State could recover the \$3.2 million projected air program funding shortfall by adjusting the emissions fee for inflation and adding the surcharge for every ton above the cap, for a total of \$3.3 million in revenues each year.

Other changes such as adjusting the cap upwards, or removing the cap, would also raise greater revenues. These changes would allow the agency to distribute the costs of regulation more equitably between large and small fee payers, and stabilize funding for the near future.

10.6 Modify the Wastewater Treatment Inspection and Public Water System fees to more equitably distribute costs between large and small payers.

This provision would redistribute the costs of regulation more equitably between small and large fee payers for the wastewater treatment inspection fee and the public water system fee. The Legislature would have to determine the level of modification to the rates within each

The Legislature could consider several options relating to the Air Emissions fee cap.

fee. For example, the rate per-connection for public water systems could be adjusted so that systems with over 100,000 connections paid an annual surcharge, in combination with lowering the rates for smaller systems.

In the case of wastewater treatment facilities, those facilities at the fee cap could pay an annual surcharge, in combination with lowering the rates for facilities below the cap. As another option, regulated entities such as large municipalities holding more than one permit, could pay a surcharge for each additional permit, in combination with lowering the rates for facilities holding one permit.

10.7 Eliminate the following fees — Air Permit Renewals, Toxic Release Inventory Reporting, Above Ground Petroleum Storage Tank, and Solid Waste Permitting.

This change would require the Legislature to adjust the rates, or add a minor surcharge, in each media — air, water, and waste, to recover approximately \$750,000 in revenues. Current regulation would continue, but the administrative costs associated with collecting the fees would be eliminated.

Issue 11

TNRCC's Fee Structure Lacks Accountability and Limits the Revenues the Agency Is Able to Collect.

Key Findings

- TNRCC's fee collection system lacks accountability to ensure that fees are being properly paid.
- TNRCC assumes administrative costs to adjust fees for payers, which limits the agency's ability to ensure all fees are being paid.
- TNRCC does not consistently apply existing penalty and interest authority to all entities making late payments.

TNRCC has not fully integrated all fee payers into a system that holds them equally accountable for making accurate and timely payments to the agency. Currently, some fee payers are paying penalties for not submitting fees on time, while others do so without being sanctioned. Major TNRCC fees are managed under a self-report system that creates risks that the agency will not recover all fees that payers must pay as a condition of having a permit to operate. Strengthening TNRCC's revenue management by improving fee payer accountability would enable the

The self-report system of fee payments creates risks that TNRCC will not recover all fees that are due.

agency to collect a greater percentage of fees on a more timely basis, and give payers better incentives to ensure that reporting data and fee calculations are accurate. The recommendations will generate additional revenues of \$3.5 million over five years.

Recommendation

Change in Statute

11.1 Require payers to submit all fees on the date payment is due.

This recommendation would require payment of all fees by the due date, whether they are billed or self pay. Under this change, a fee may not be adjusted or disputed until the fee in question is paid in full to the agency.

11.2 Allow the agency to accept revisions to self-reported fee data for only up to one year after the fee is paid in full.

Agency staff would consider adjustments only after verifying that the fee in question is paid in full, and staff would not accept revised fee data from payers after one year has elapsed from the time the fee is paid. Payers would still be able to request refunds of fees for up to four years as allowed under current law, for example because of agency error in calculating a fee or a payer sending in a duplicate payment. This recommendation would limit the time a payer has to request a credit or refund due to submitting incomplete or erroneous self-reported fee calculation data. This recommendation would also require the agency to notify payers of changes in fee payment procedures.

11.3 Require fee credits or refunds exceeding \$5,000 to be approved by fee audit staff.

This recommendation would require fee staff to forward refund requests to audit staff explaining the basis for a proposed credit or refund for audit approval. Auditors would not be required to investigate the refund, but could confirm that the payer does not have any delinquent debts and track adjustment patterns that may show reporting problems. Approval of refunds would not prevent fee auditors from conducting subsequent audits of those same payers. The \$5,000 threshold allows the majority of fee adjustments to be processed under the current system, while ensuring additional oversight for larger refunds.

11.4 Authorize fee audit staff to issue a notice of violation to fee payers for willful violation of reporting requirements, and authorize the agency

to charge interest and penalties on unpaid fees that are delinquent.

This recommendation would grant authority to audit staff that agency inspectors already have to ensure compliance from repeat offenders that continue to violate reporting standards and under pay fees. TNRCC would also be able to apply standard late penalties and interest to all delinquent fee amounts owed to the agency. Penalty and interest revenues would be deposited into the account that the fees are paid.

11.5 Authorize the TNRCC Executive Director to modify penalty and interest amounts only upon good cause and with written explanation.

This recommendation would allow the Executive Director discretion in negotiating payment terms for audit findings and associated penalties, but only after providing to audit staff written justification for any modifications to penalty and interest amounts. The Executive Director would not be permitted to modify actual audit findings reported by fee auditors.

Management Action _____

11.6 TNRCC should integrate major air fees, such as the emissions and inspections fees, into the Accounts Receivables database maintained by the Financial Administration Division.

This recommendation would encourage the transfer of air fee data into the Accounts Receivables database to ensure the data is not subject to accidental loss, that other agency staff can maintain the data, and enable the generation of reports for agency use.

11.7 TNRCC should consolidate fee auditors by transferring air fee auditors to the general fee audits section.

This recommendation would encourage the placement of air fee auditors in the fee audit section, removing the potential appearance of a conflict of interest from housing air fee auditors in the same program that administers the fee.

11.8 TNRCC should make efforts to track delinquent payers and apply late payment penalties and interest to Hazardous Waste Management, Class 1 Commercial Waste Management, and Water Utility Regulatory Assessment payers.

This recommendation would encourage the agency to apply late payment penalties and interest to all payers in a uniform manner, and the agency should ensure that fee staff have training and procedures in place to implement the recommendation.

Issue 12

The Public Does Not Know Whom TNRCC Decisionmakers Consult with in Making Regulatory Decisions.

Recommendations in Issue 7 of this report section address the composition and use of advisory committees, task forces, and workgroups, which often significantly impact agency decisions. However, individuals may also affect agency decisions through formal and informal contacts with Commissioners and other top-level staff.

Recommendation

Change in Statute

12.1 Require each Commissioner and agency staff member with discretionary authority over a regulatory matter to maintain a written record of communications with persons outside the agency regarding any such matter.

This recommendation would require the TNRCC Commissioners and agency staff with discretionary authority over any aspect of a permit, enforcement, rulemaking, or other regulatory matter pending before or within the jurisdiction of the agency to maintain a written record of each communication and contact with any person, other than TNRCC employees, regarding the matter.

The written record would be subject to disclosure under the Open Records Act, and should include the following information:

- name of the person;
- the person's employer;
- the party or interest whom the person is representing;
- the specific regulatory matter on which the contact is made;
- the time, date, and place where the contact is made; and
- the method of contact, whether in person or by letter, phone, or email.

Issue 13

Solid Waste Disposal Permits Do Not Receive the Ongoing Scrutiny They Need.

TNRCC is responsible for permitting municipal solid waste facilities, or landfills. Among the many considerations for a landfill permit are location with respect to airports and wetlands, protection of groundwater, closure and post-closure maintenance, financial assurance, and compatibility with the surrounding area.

Recommendation

Change in Statute _____

13.1 Require the Commission to review solid waste disposal permits every five to seven years to assess compliance performance.

This recommendation would not create a new opportunity for a contested case hearing, but would provide for a periodic assessment of how well these facilities are performing under their permits.

Issue 14

Statutory Authority for the Regulation of Water Treatment Specialists Should Be Consolidated Within TNRCC.

TNRCC has jurisdiction over approximately 44,000 occupational licensees, including water and wastewater operators. As part of this effort, TNRCC certifies residential water treatment facility operators, having taken over responsibility for this program from the Texas Department of Health in the early 1990s. This recommendation would clarify and strengthen TNRCC's statutory authority over this certification program.

Recommendation

Change in Statute _____

14.1 Clarify and strengthen TNRCC's authority for regulating water treatment specialists.

This recommendation would require TNRCC to develop and adopt rules for the certification of Texas Water Treatment Specialists for individuals who install and maintain water treatment equipment and appliances. The recommendation would also change the certification and program title to “Texas Water Treatment Specialist Certification Program,” set the certification fee to cover administrative costs, at a cap not to exceed \$150 per any class of certification, and define “water treatment,” “water treatment equipment,” and “installation of water treatment appliances.”

Issue 15

TNRCC Has Not Created Records Required Under the Administrative Procedure Act Regarding Commission Orders, Policies, and Interpretations.

The Administrative Procedure Act and TNRCC’s statute require it to create indexes and cross references to its orders, statements of policy, and interpretations, and make all final orders available to the public. However, members of the public and the regulated community continue to have difficulty accessing such information.

Recommendation

Change in Statute

15.1 Require TNRCC to create indexes and cross references to its orders, statements of policy, or interpretations, and make all final orders available to the public.

This recommendation would require TNRCC to comply with the Administrative Procedure Act and its current statutory requirement to document its decisions and make them available to the public.

Issue 16

TNRCC Does Not Have a Focused Approach for Dealing with Environmental Problems Along the Texas-Mexico Border.

The border with Mexico presents special problems of dealing with environmental matters with a sovereign nation. In addition, rapid growth in the border region, especially related to the North American Free Trade Agreement, has placed a larger burden on the region’s water

resources. These recommendations provide a number of management actions the agency can take on its own, without statutory change, to address border environmental problems.

Recommendation

Management Action

The agency can take a series of actions on its own, without statutory directive, to address border environmental problems.

16.1 TNRCC should implement a series of strategies to address environmental problems along the Texas-Mexico border.

Under this recommendation, TNRCC would implement the following management actions to address water quality issues on the Rio Grande.

- Identify and prioritize environmental problems that affect the Rio Grande, and develop an action plan that identifies federal, state, and local resources that can address priority issues.
- Establish the position of Rio Grande Environmental Coordinator with a staff to promote local, state, federal, and international cleanup efforts. Ensure that the effort is international to be effective.
- Issue an annual “State of the Rio Grande” report to the Texas Legislature with policy recommendations as a supplement to International Boundary and Water Commission reports.
- Prioritize developing communication and cooperation between agency divisions, especially those responsible for monitoring, permitting, and enforcement.
- Hire regional staff with a “basin-wide” perspective and a demonstrated expertise in solving environmental problems and a commitment to environmental improvement.
- Offer technical assistance to help all border cities, Mexican and American, develop zoning ordinances for the location of warehouses that handle toxic materials.
- Offer technical assistance to help all border cities, Mexican and American, ensure that warehouse construction is appropriate to the kinds of materials being handled.
- Identify and pursue additional funding sources to combat illegal dumping of garbage, tires, and toxic materials in the Rio Grande watershed.
- Offer technical assistance to Mexico regarding wastewater treatment, nonpoint source pollution and chemical spills.

- Facilitate creation of “Friends of the Rio Grande” volunteer cleanup programs and establish a recognition/award system to build on the Texas Clean Rivers Program, which uses multiple groups, from schools to non-profit organizations, to capture river quality data.
- Use the expertise of border colleges and universities to aid in pollution monitoring and analysis.
- Provide technical assistance and access to technical education to support local enforcement efforts.

Issue 17

TNRCC Should Do More to Help Small Businesses Comply With Environmental Regulations.

TNRCC currently provides outreach and technical assistance to the regulated community, and specifically targets small businesses through site visits, workshops, and rule notifications. Despite these efforts, small businesses have difficulty understanding the complicated environmental requirements imposed on them. This recommendation would direct TNRCC, as a management action, to redouble its efforts to assist these small businesses.

Recommendation

Management Action

17.1 TNRCC should improve its job of providing technical assistance to small businesses.

This recommendation would direct TNRCC to improve its technical assistance to small businesses by making rules and processes less confusing and by providing more compliance assistance.

Issue 18

Texas Has a Continuing Need for the Texas Natural Resource Conservation Commission.

Key Findings

- Texas has a continuing interest in protecting human health and the quality of its natural resources.

- Despite progress, remaining environmental problems and challenges require a continued regulatory effort.
- No other state, local, or private entity exists that can perform TNRCC's core function of protecting the environment.

The Texas Natural Resource Conservation Commission's mission — to protect the state's human and natural resources, consistent with sustainable economic development — is vital to Texas and its citizens. TNRCC's focus is the preservation of human health through improved water, air, and land quality. While numerous environmental challenges exist, Texas is served by having a state agency that administers environmental protection and regulatory programs.

The Sunset review evaluated the continuing need for a single, independent agency to manage state and federal laws designed to protect the environment and human health. The review assessed whether the agency's functions could be successfully transferred to another agency, and looked at how other states administer environmental regulatory programs.

Recommendation

Change in Statute _____

18.1 Continue the Texas Natural Resource Conservation Commission for 12 years.

This recommendation continues the agency for the standard 12-year period until 2013.

Fiscal Implication Summary _____

This report contains several recommendations that would have a fiscal impact to the State. They are discussed below, followed by a five-year summary chart.

- Issue 1 Coordinating the use of innovative regulatory programs may require additional staff outside of existing strategic planning and outreach staff resources. A possible source of funding for these positions, if required, could be made available through greater agency funding flexibility as outlined in Issue 10.
- Issue 4 Using unannounced inspections for entities with a poor compliance history could result in additional costs to the agency. The amount could not be estimated for this report.

- Issue 5 Requiring the agency to accredit environmental laboratories conducting business with the state would not result in additional costs to the State, but would be funded by fee payments to cover the costs of administering the program. The accreditation program would require annual revenues of \$427,805 and an additional five staff positions.

- Issue 7 Strengthening the Public Interest Counsel could result in additional costs for outside technical support, capped at \$100,000 per year. The recommendation to authorize the Public Interest Counsel to recommend needed legislative and regulatory changes could also require additional resources. These recommendations could be achieved through a reallocation of resources within the Commissioners' Office budget.

- Issue 8 Allowing, rather than requiring, the Executive Director to be a party in contested case hearings would result in savings to General Revenue by reducing legal staff time spent at hearings in which the Executive Director is not a party. These savings could not be estimated for this report.

- Issue 10 Streamlining the agency's current fee structure could result in administrative savings. These savings could not be determined for this report. Several options are provided to stabilize the agency's current funding structure that could have significant fiscal impacts if adopted by the Legislature.

- Issue 11 Improving revenue management would have a positive fiscal impact for the State of \$885,000 in the first year and \$660,000 thereafter.

Fiscal Year	Gains in Dedicated Fee Revenue	Cost to Dedicated Revenue	Change in FTEs From FY 2001
2002	\$1,312,805	\$427,805	+5
2003	\$1,087,805	\$427,805	+5
2004	\$1,087,805	\$427,805	+5
2005	\$1,087,805	\$427,805	+5
2006	\$1,087,805	\$427,805	+5

Texas Parks and Wildlife Department



Agency at a Glance

To meet its mission, the Texas Parks and Wildlife Department:

- protects and conserves the state's fish and wildlife resources by regulating the taking of fish and wildlife in Texas;
- operates a system of public lands, including 122 state parks, natural areas, and historic sites; and 51 wildlife management areas, covering approximately 1.4 million acres of conservation and recreation lands;
- aids local political subdivisions in developing recreational facilities through grants and technical assistance;
- provides technical guidance and conservation incentives to private landowners, develops management plans for about 10 million acres of private land, and promotes recreational opportunities on those private lands;
- educates the public regarding laws and rules regulating fish, game, environmental habitat, boating safety, firearm safety for hunters, and fish and wildlife conservation; and
- publishes Texas Parks and Wildlife magazine and produces a weekly television show aired on public broadcasting stations.

Key Facts

- **Funding.** TPWD's fiscal year 2000 total budget is \$256.3 million, including \$177 million for ongoing agency operations, \$50.3 million for capital projects, and \$29 million for grants. The State Parks Division receives the largest share of the operating budget, \$49.7 million, or 28.1 percent. The Law Enforcement Division receives approximately \$39.9 million, or 22.5 percent; and Inland Fisheries, Coastal Fisheries, and Wildlife jointly make up 24.1 percent, or \$42.5 million.
- **Sources of Revenue.** Regulatory and user fees make up the majority of the Department's budget (\$146 million, or 72 percent). Federal funds provide \$20.6 million, or 10 percent; state general revenue provides \$22.6 million, or 11 percent; and various other sources provide the remaining \$14 million, or 6 percent.
- **Staffing.** TPWD has 2,954 budgeted full-time equivalent employees stationed at more than 225 locations throughout the state.
- **Fish and Wildlife Conservation.** TPWD licenses Texas hunters and anglers, and sets and enforces game seasons and bag limits. TPWD protects and enhances wildlife habitat through land

Texas Parks and Wildlife Department



acquisition, conservation easements, developing or improving reef habitat, and partnerships with landowners, businesses, and conservation organizations.

- **State Parks.** TPWD owns and oversees more than 650,000 acres of land, including 122 state parks, historic sites, and natural areas. More than six million paid visits are made to TPWD park facilities annually.
- **Coastal and Inland Fisheries.** The Department manages the marine fishery resources of Texas' four million acres of saltwater and regulates 15,000 commercial fishermen. TPWD also regulates sport fishing on Texas' 80,000 miles of inland rivers and streams and 800 public impoundments.
- **Resource Protection.** TPWD investigates environmental contamination that may cause loss of fish or wildlife and monitors the condition of bays, estuaries, aquatic vegetation, and other habitats.

Commission Members (10)

Lee M. Bass, Chair (Fort Worth)

Perry R. Bass, Chair Emeritus (Fort Worth)

Carol E. Dinkins, Vice Chair (Houston)

Ernest Angelo, Jr. (Midland)

John Avila, Jr. (Fort Worth)

Richard W. (Dick) Heath (Carrollton)

Alvin L. Henry (Houston)

Katharine Armstrong Idsal (San Antonio)

Nolan Ryan (Alvin)

Mark E. Watson, Jr. (San Antonio)

Agency Head

Andrew Sansom, Executive Director, (512) 389-4800

Recommendations

- Require TPWD to Assess the State's Natural and Cultural Conservation and Recreational Resource Needs, and Base Acquisition, Divestiture and Major Operational Decisions on This Assessment.
- Require the Parks and Wildlife Commission to Establish Guidelines and Policies Regarding the Department's Relationship with an Official Foundation Partner.

Texas Parks and Wildlife Department



Recommendations (cont.)

- Direct the Parks and Wildlife Commission to Structure Its Committees so that Public Input Is Received Before Decisions Are Made.
- Legislatively Required Analysis of Funding Alternatives for TPWD.
- Establish Standard Business Oversight Mechanisms for Commercial Ventures and Other Department Operations.
- Require TPWD to Evaluate Current and Proposed Outreach and Education Efforts for Effectiveness and Duplication.
- Require the Department to Examine Capital Projects for Appropriate Funding and Staffing Methods, and Outsourcing Potential.
- Direct TPWD to Promote Stronger Partnerships with Private Landowners to Maximize Conservation Efforts.
- Adopt the Recommendations of the Texas Cultural Heritage Plan.
- Prohibit Promotion of Alcohol and Tobacco in TPWD Operations, Events, and Publications, Including the Fishing and Hunting Regulations Guide.
- Require the Department to Conduct a Study of the Texas Gulf Coast Shrimp Resources and Industry.
- Require the Department to Improve Access to Parks for Disabled Citizens.
- Continue the Texas Parks and Wildlife Department for 12 Years.

Issue 1

The Lack of a Comprehensive Approach to Managing Texas Public Resources Limits Quality Decisionmaking.

Key Findings

- TPWD coordinates Texas' system of conservation and recreation resources without an adequate basis for determining conservation and recreation needs.
- Lack of a comprehensive plan has resulted in ineffective decisionmaking that compromises the agency's ability to meet Texas' conservation and recreation needs.

TPWD does not have a statewide, comprehensive system management plan to use when making all inventory acquisition, divestiture, and partnership decisions. As a result, TPWD's decisionmaking has resulted in redundancies in holdings, may cause the loss of valuable resources that are overlooked or never identified, and has negatively affected the Department's ability to partner with other public and private organizations.

Adequately inventorying the State's current holdings would help assess current and future conservation and recreation needs statewide.

Recommendation

Change in Statute

- 1.1 Require TPWD to develop a system to assess public conservation including both natural and cultural, and recreational resource needs. TPWD should base all acquisition, divestiture, and major operation decisions on this assessment.**

This recommendation contains three major statutory components.

- Require TPWD to create a comprehensive inventory of all conservation and recreation resources owned by public agencies and non-governmental organizations.

Adequately inventorying Texas' current holdings would help assess current and future conservation and recreation needs statewide. When creating this inventory, TPWD should survey all public resources set aside for natural or historical conservation or recreation in Texas; cities, counties, river authorities, and the federal government; and private, nonprofit, and nongovernmental organizations.

- Require TPWD to establish criteria for evaluation of future decisions affecting conservation and recreation resources.

TPWD would use the newly created statewide inventory as a basis for analyzing current and future needs, for identifying threatened resources, and for identifying the level of importance of TPWD holdings when considering divestiture. This recommendation would ensure that the agency bases its actions regarding system development on criteria established for the following areas.

Divestiture - Divestiture decisions would follow criteria to ensure that valuable and unique resources aren't being lost, and that the State only maintains properties with statewide conservation or recreation value.

Acquisition - Acquisition includes purchases of wildlife management areas, state park lands, historical and cultural sites, fishery operations, and water resources. Until TPWD implements these recommendations, the Department should refrain from purchasing new independent park, wildlife, or historical sites, but could continue to purchase in-holdings or additions that increase public access to current recreation and conservation facilities. TPWD should evaluate the need for acquiring water rights to preserve critical aquatic habitats, but must balance this against other priorities.

Operations - In determining the highest and most appropriate use of existing facilities, TPWD should use the criteria developed through this recommendation. Current individual park operating plans should be re-evaluated to see if areas have achieved an appropriate balance of use and conservation.

Local parks assistance grants and partnership agreements - An inventory and established criteria would help determine the most efficient way to grant monies to local parks, and to partner with conservation organizations and private landowners.

- Expand TPWD's statute to include responsibility for coordination of all conservation resources and facilities.

TPWD currently acts as the State coordinator of all conservation and recreation lands and facilities, but the agency's statute limits coordination authority to parks, recreation, and wetlands. TPWD should coordinate with all state agencies with similar primary goals.

Management Action

1.2 TPWD should initially and continually consult with the Texas Historical Commission regarding the inventory and assessment of Texas' cultural resources.

As the agency with primary responsibility for protecting Texas' historical and archaeological resources, THC should play an early and active role in both the inventory of these resources and the assessment of future needs. THC has the expertise to provide extensive information on publicly available cultural resources for the inventory and how to evaluate gaps or redundancies in those holdings.

Issue 2

The Department Has Beneficial Relationships with Private Non-Profit Foundations, but Additional Controls Are Needed.

Key Findings

- The Texas Parks and Wildlife Department's relationships with private foundations have effectively advanced conservation in Texas.
- The interrelationship between the activities of state employees and foundations can create the appearance of conflicts of interest.
- Because TPWD's primary foundation partner operates outside the public arena and without statutory definition, its actions may not always be consistent with public policies.
- With proper controls in place, the Department's foundation partner could administer business ventures and accept sponsorships to benefit the Department.

To more effectively provide for conservation and recreation, TPWD has explored a variety of creative means to expand its revenue, including establishing relationships with private, nonprofit foundations interested in conservation. In particular, the Parks and Wildlife Foundation of Texas, Inc. (Foundation) was formed to receive gifts to the Department and to perform functions outside of normal governmental operations. This relationship has been successful, but can create dangers as well as opportunities.

With proper controls, a partner foundation could improve TPWD's commercial ventures.

One danger is that state employees who solicit donations may be seen as returning favors to the donors. Another danger is that because of the close relationship between the Foundation and TPWD, members of the public may not distinguish between the state agency and the private foundation. This blurred distinction raises the risk of negative consequences to the State when a private foundation spends public funds without the normal constraints placed on a state agency, such as contracting and purchasing prohibitions. With institution of proper controls, however, a partner foundation could take over and improve the Department's commercial ventures, as TPWD has not always managed its money-making ventures in a profitable manner.

The public should be assured that an appropriate relationship between TPWD and its supporting foundation exists, that public funds are protected, and that the missions of the state agency and the foundation are in harmony.

Recommendation

Change in Statute

2.1 Authorize the Parks and Wildlife Commission to select a single foundation as the official nonprofit partner of the Texas Parks and Wildlife Department.

The selected foundation should be guided by the following provisions.

- Mission is the same as the Texas Parks and Wildlife Department.
- Full authority to accept gifts, grants, and donations to further the mission of the Department.
- An annual independent financial audit filed with the Parks and Wildlife Commission.
- For public funds held by the foundation, provide authority for the State Auditor's Office to examine and audit financial records.
- Prohibition against state employees directly spending or obligating foundation funds.
- Requirement that expenditures of public funds meet applicable state and federal standards and guidelines.
- Prohibition against spending state funds to lobby the Texas Legislature.
- Acquisition and construction priorities consistent with TPWD conservation and recreation priorities.

- Prohibition on direct payments to employees of the Texas Parks and Wildlife Department other than reimbursement for documented expenses.

This recommendation would authorize the Commission to designate an official foundation partner to accept donations that further the work of the Department. This official foundation would be authorized to solicit and accept corporate sponsorships within guidelines established by the Commission. In addition, the selected foundation would continue the role of organizing and managing the accounts for the various site-specific “friends” groups that benefit individual state parks and other TPWD sites.

2.2 Require the TPW Commission to adopt policies governing the fund-raising activities of TPWD employees.

At a minimum, the policies should:

- designate which employees may solicit or accept donations,
- prohibit donations by commercial interests regulated by the Department,
- create limitations on where and how fund-raising may occur,
- establish reporting requirements, and
- designate the Executive Director as the person responsible for managing all fund-raising activities.

2.3 Require TPWD to ensure that partner foundations that hold public assets properly safeguard and account for assets, and make decisions to complement Department strategies.

The Parks and Wildlife Commission should adopt rules requiring all of its nonprofit partners to adhere to state standards for safeguarding and accounting for State assets. At a minimum, all State funds should be held to the standards in the Public Funds Investment Act (Government Code Chapter 2256). The Department’s nonprofit partners also should be expected to make decisions in accordance with the priorities in TPWD’s strategic, statewide plan for conservation and recreation development.

Management Action _____

2.4 TPWD should contract with its primary foundation partner to provide a business incubator for commercial ventures.

This recommendation would encourage the Texas Parks and Wildlife Department to move its commercial ventures to its partner foundation where additional attention and business expertise could be applied.

Issue 3

The Texas Parks and Wildlife Commission's Committee Structure Appears to Limit Public Input into Its Decisions.

Key Findings

- Public input is important to the decisionmaking process of the Texas Parks and Wildlife Commission.
- The Texas Parks and Wildlife Commission uses an unusual committee structure that inadvertently limits public input into its decisions.

The Parks and Wildlife Commission does not gain the full benefit of public input in its decisionmaking process.

Although TPWD employees effectively solicit public involvement in regulatory activities, the Parks and Wildlife Commission does not gain the full benefit of public input in its decisionmaking processes. Unlike most state governing boards, the Parks and Wildlife Commission's committees meet as committees of the whole. Although the full Commission accepts public testimony before officially voting on issues, no public testimony is accepted at committee meetings when the Commission discusses and takes initial votes on issues. As a result, public input is only solicited after Commission members have made their positions known — limiting the effectiveness of public input to the Commission.

Recommendation

Change in Statute

3.1 Require the Texas Parks and Wildlife Commission to accept public input before voting on major decisions whether in committee or as a full commission.

Define, for the purposes of the public input requirement, major decisions as voting on rules and proclamations, contracts, budgets, grants, development plans, memorandums of understanding, and other decisions as determined by the Commission.

3.2 Require the Texas Parks and Wildlife Commission's committees that constitute a quorum of the full Commission to abide by all requirements for public input that apply to the full Commission.

These recommendations would give the Commission flexibility to structure its committees and accept public input under its terms while assuring the public that its voice will be heard before important decisions are made.

Issue 4

Response to the Legislatively Required Analysis of Funding Alternatives for the Department.

Key Findings

- Because of questions about funding the Texas Parks and Wildlife Department, the Legislature requested the Sunset Commission to review the Department's sources of dedicated funding.
- TPWD's current funding structure is stable and predictable, but somewhat inflexible.
- The Texas Parks and Wildlife Department has not fully studied its spending patterns to find areas of savings.
- If the Legislature chooses to provide additional revenue, the Department could meet Texas' conservation and recreation needs more effectively.

To fulfill the legislative requirement that the Sunset Commission review the Parks and Wildlife Department's sources of dedicated revenue, a number of possible statutory changes were considered. The Sunset review found the current mix of license revenues and dedicated taxes to be stable and predictable. The Department's license revenue is somewhat inflexible as it is constrained by market forces.

The review paid particular attention to the sporting goods sales tax, the Department's primary source of general revenue, to see if the tax fully relates to the agency's mission. The review found that while the sporting goods tax is not perfectly related to park use, no other significant tax or new user fee offers a greater connection. The review noted that if the Legislature opts to provide additional funding, TPWD could offer additional services to better meet conservation and recreation needs. Because only the Legislature can fully weigh funding needs of all areas of government, this report states alternatives and does not make recommendations.

The Sunset review found the current mix of license revenues and dedicated taxes to be stable and predictable.

Recommendation

Funding Alternatives ---

4.1 The Legislature should consider removing the statutory \$32 million cap on appropriations to the Parks and Wildlife Department from the sporting goods sales tax and replacing it with an authorization for the Legislature to set the cap each biennium in the General Appropriations Act.

Under this approach, the Legislature would assess TPWD's needs each biennium and set the cap on sporting goods sales tax revenues as part of the appropriations process. The amount of TPWD funding from this source would depend on the Department's ability to justify additional funding.

The sporting goods sales tax has a high relationship between the payers of the tax and the purposes of the tax revenue. State law directs that 50 percent of the income from the sporting goods tax (40 percent of the amount above \$27 million) be dedicated for local park development and acquisition grants. If the cap were removed or raised, the same percentage of additional funding could be allocated to local parks, or new funding could be allocated to solely meet TPWD needs.

4.2 The Legislature should consider requesting Texas voters to approve a new series of General Obligation Bonds for acquisition and development of park and conservation lands.

With the end of TPWD's park development bond authority, the Department is now dependent on legislative appropriations or gifts for land acquisition and infrastructure development. However, paying for major land or construction projects through bond proceeds is a common method of financing projects that would be far less expensive to buy or build now rather than in the future. In addition, certain lands or cultural resources may only be available for preservation for a limited time. Without available bond proceeds, the State may not be able to purchase and preserve these properties.

Issue 1 requires TPWD to assess the use and purpose of public resources and develop a strategy for future acquisition needs. New bonding authority would provide a means for TPWD to address identified needs. Actual sale and use of bond proceeds could not occur unless approved by the Legislature and a vote of Texas citizens.

Issue 5

TPWD Lacks Standard Business Oversight Mechanisms for Commercial Ventures and Other Department Operations.

Key Findings

- The Department has developed numerous commercial ventures intended to generate new sources of revenue.
- Creating commercial ventures without business plans and proper oversight leads to duplication and loss of funds.
- TPWD uses unrealistic estimates of costs and revenues for certain commercial venture projects.
- TPWD does not consistently evaluate outsourcing opportunities for commercial ventures or other Department activities.

TPWD is missing several standard mechanisms to ensure that its business activities and commercial ventures operate cost-effectively. First, TPWD needs an agencywide business plan to guide its business strategies.

Second, TPWD should manage its large commercial ventures like a business. Each statewide commercial venture should be guided by a complete and achievable business plan. The Department's senior management should approve the full business plan and the financial plan, and monitor implementation to ensure cost-effectiveness.

Finally, TPWD must evaluate programs that could be considered for outsourcing. Opportunities for partnerships with the private sector exist in commercial ventures and Department-operated functions. Significant savings and customer service improvements can result from such an examination.

Recommendation

Change in Statute

- 5.1 All significant statewide commercial ventures undertaken by TPWD should be supported by a business plan and approved by Executive Management.**

TPWD's commercial ventures should be carefully controlled to ensure that they benefit the Department. Failure to plan a commercial venture effectively, and the use of optimistic estimates of the costs and revenue of a commercial activity, can contribute to inefficiency and detract from the Department's mission. The business plan of a statewide venture should be reviewed at least annually to assess overall performance and value of the project. Projects that fail to meet financial objectives should be immediately adjusted or terminated.

Successful commercial ventures should be considered for outsourcing, if appropriate, in a manner similar to TPWD's merchandise catalog. Unsuccessful, money-losing projects with a public relations value or an educational purpose should also be considered for privatization when nonprofit entities may be available to assume responsibility for the initiatives.

Judging the success of a commercial venture requires an accurate accounting for all the costs and reasonable projections of income from the project. TPWD should develop and use an activity-based costing methodology to record all project costs and accurately calculate the net income from a commercial venture.

5.2 TPWD should develop an agencywide business plan to guide the Department's operational strategies.

Lack of a business plan hinders TPWD's ability to make effective decisions.

Lack of a business plan hinders the Department's ability to make effective decisions. As with other state agencies' business plans, TPWD's effort should focus on the efficiency of current operations, as well as the potential for changes necessary to best meet the Department's overall goals. The development of the business plan should include a strategy for best use of outsourcing opportunities.

5.3 Require TPWD to assess the potential for outsourcing of agency activities as part of the business planning effort, and use the services of the Council on Competitive Government where appropriate.

Requiring an agency to compare the services and products it provides to those from the private sector forces the agency to examine how best to use its resources. This comparison can foster both increased savings and potentially improved customer service.

Management Action _____

5.4 TPWD should report the performance and estimate future revenues of its statewide commercial ventures.

Failed commercial ventures create significant costs for the State and should be considered when the Legislature deliberates agency appropriations. Conversely, new income should be appropriated consistent with the agency's primary objectives. Improved legislative awareness of commercial ventures will help to ensure appropriate oversight of the use of agency resources.

Issue 6

The Department Does Not Manage Its Outreach and Education Efforts Effectively.

Key Findings

- TPWD operates an extensive array of education and outreach programs.
- The Department exercises inadequate management of its education and outreach efforts.
- TPWD does not use existing education and outreach opportunities effectively.

TPWD emphasizes outreach and education as a core part of its mission. However, the Department cannot identify how it spends education and outreach funds, show that it uses the funds efficiently, or illustrate if programs effectively educate participants. The Department's efforts could be streamlined through more and stronger partnerships, internal coordination, and better program evaluation.

Recommendation

Change in Statute

6.1 Require TPWD to assess all existing outreach and education programs for effectiveness and duplication.

TPWD should examine current outreach efforts to ensure they fit with the agency's mission, they do not duplicate efforts within or outside of the Department, and their effectiveness can be measured. TPWD should complete this review by September 1, 2002, and report its findings to the Parks and Wildlife Commission and legislative oversight and appropriate committees. During the review, TPWD should limit expenditures on such programs unless the program is statutorily required or proven successful.

Management Action ---

6.2 The Department should increase internal oversight of its outreach and education efforts.

TPWD's new Outreach Coordinator must play a role in developing and measuring outreach and education efforts. The Education Division, which should house the Outreach Coordinator, should serve in a broader capacity and have responsibilities including overseeing and coordinating outreach efforts.

6.3 Evaluate all proposed outreach and education programs and events to determine if they are needed, and if they duplicate other internal activities or efforts of other agencies and organizations.

The Outreach Coordinator and Education Division staff should examine a potential outreach or education program's objectives to ensure its goals could not be reached through existing Department programs, or through partnership with other entities.

6.4 TPWD should develop more extensive partnerships with other state agencies, state universities, and national organizations to coordinate outreach and educational programs and events.

TPWD should work with private, public, and nonprofit entities to address and develop a framework for outreach and education in Texas.

TPWD should partner with private, public, and nonprofit entities to address conservation education in Texas.

Issue 7

Staffing Policies and Funding Methods for Capital Projects Cause Delays and May Increase Costs.

Key Findings

- Construction and maintenance of facilities in state parks, fish hatcheries, and wildlife management areas require a large effort by TPWD.
- TPWD places an unnecessary strain on limited revenue by not paying for all eligible capital project costs through bonds.
- In-house staffing constraints increase project development costs and require projects to be scheduled into subsequent fiscal years.

- Lack of a single point of accountability for capital projects may waste resources and allow for non-compliance with state policies.

Without complete information about its in-house construction services costs, TPWD cannot document whether it should contract with private companies for planning, design, and construction services or whether those services should be performed by agency staff. In addition, TPWD cannot ensure that the most appropriate source of funds — bond proceeds or general revenue — pays for project costs.

Although TPWD currently manages more than \$82 million for maintenance, repair, and construction projects, the agency has no single point of accountability for capital projects. The Department cannot ensure that all projects follow state purchasing laws, that agency records document significant business decisions and justify additional project costs, or that projects are carried out as planned, and in a manner that follows standard design and construction protocols.

TPWD does not have a single point of accountability for capital projects.

Recommendation

Change in Statute

7.1 Require TPWD to examine the costs and benefits of increasing the outsourcing of its construction-related services.

TPWD does not have information needed to compare the cost of in-house services with services available in the private sector. The Department should calculate project costs using the direct and indirect costs of TPWD employees that perform necessary project tasks.

Management Action

7.2 TPWD should consider methods to maximize the use of bond and other project-dedicated proceeds to pay for costs of capital projects.

7.3 Require TPWD to finance all routine maintenance activities from operating revenues, not bond funds.

In general, state agencies using bond proceeds for capital projects use those proceeds to pay for all elements of project costs. TPWD needs to closely examine the impact of using bond proceeds to pay for in-house design and engineering costs of its bond funded projects. Activity-based costing guidelines will assist TPWD to allocate in-house costs to the appropriate projects.

7.4 The Infrastructure Division should approve or manage all significant capital projects and ensure that TPWD builds all projects under standards set by the Division.

The Department should increase its efforts to centralize capital project management and oversight to ensure that projects are started and completed on time and that funds are spent appropriately. Oversight of project management will provide project consistency, timeliness, and adherence to quality standards. The Department should establish standards for the type and size of project that should be subject to Infrastructure Division management or approval. With this authority, the Infrastructure Division should be held accountable for ensuring that decisions regarding capital projects comply with applicable federal and state laws and regulations, and are clearly documented.

7.5 TPWD should develop policies, procedures, file guides, and best practices to ensure that agency capital projects are appropriately documented. Charge the Infrastructure Division with enforcing the policies in cooperation with the Department's Internal Auditor.

7.6 The Infrastructure Division should collect and maintain information about facility conditions and life cycle cost and give the Division the requisite authority to collect the information.

Collecting the initial information for a facilities management system will be labor intensive and must be extremely accurate to be effective. Management should give the Division the appropriate authority and tools to assemble this necessary data.

Issue 8

The Department Does Not Focus Its Conservation Assistance to Private Landowners.

Key Findings

- Conservation in Texas depends on the involvement of private landowners.
- TPWD's shotgun approach to its landowner assistance efforts limits its effectiveness.

- TPWD does not focus its funding for landowner assistance programs by effectively coordinating with other governmental agencies and private groups.

TPWD has developed well-received landowner assistance programs to facilitate conservation of natural and cultural resources on private lands. However, TPWD has not devised a biologically based plan for approaching these efforts. As a result, the Department uses a shotgun approach that limits the effectiveness of its conservation efforts. TPWD must focus private lands conservation on areas that most need assistance as well as increase the number of program participants. The Department must partner with conservation and government entities that offer similar landowner assistance programs.

The Department's
shotgun approach
limits the
effectiveness of its
conservation efforts.

Recommendation

Change in Statute

8.1 Require TPWD to assess the state's critical conservation needs and use this information to prioritize projects when working with private landowners.

To have the greatest impact on conservation, TPWD should target priority areas and base decisions on natural, ecologically defined boundaries when working with landowners. Projects not in a target area can be funded, but TPWD must consider the statewide significance and critical needs. To produce the assessment, TPWD should build on the biological component of its statewide inventory, as recommended in Issue 1.

Management Action

8.2 TPWD should seek more federal funding opportunities for private landowners' conservation efforts.

TPWD can expand its efforts to work with private landowners if the Department successfully pursues additional funding sources, including federal and nonprofit moneys, for landowners.

8.3 TPWD should seek and promote stronger partnerships and better information sharing with other entities to maximize incentives and reduce duplication of efforts.

TPWD should promote cooperative efforts with private, public, and nonprofit groups that provide technical and financial assistance to landowners.

8.4 TPWD should be more proactive in recruiting participants in its landowner assistance programs.

TPWD should quickly and consistently follow up with landowners who express interest in incentive programs, paying particular attention to landowners with potential prime habitat in targeted areas to maximize the wildlife benefit of these programs.

Issue 9

Adopt the Recommendations of the Texas Cultural Heritage Plan.

Historic sites require different management than traditional parks.

As part of its State Parks Division, the Texas Parks and Wildlife Department manages 41 historic sites throughout the state. Because these sites require different management than traditional parks, the Texas Historical Commission and TPWD jointly studied options for the future and produced a report in 1999 with their recommendations. These recommendations are intended to improve the identity and management of these historic sites.

Recommendation

Change in Statute

9.1 Adopt the statutory recommendations of the Texas Historical Commission's February 1999 joint evaluation with TPWD on State Historical Parks.

- Rename "historical parks" as "historical sites" for clarity and distinction.
- Require TPWD to jointly assemble, with the Texas Historical Commission, a professional panel to establish criteria for defining sites of statewide significance, and to ensure a Texas Historic Sites program for the future.
- Require that future appointments to the Texas Parks and Wildlife Commission be made with an attempt to include a diverse representation of specific disciplines such as cultural, historical, and recreational.
- Prepare a master plan and resource management document for each historical site by conducting thorough archeological surveys.

Management Action

9.2 TPWD should implement the management recommendations of the Texas Historical Commission's February 1999 joint evaluation with TPWD on State Historical Parks.

- Upgrade communications equipment to an acceptable technological level for all sites and headquarters.
- Establish regular reviews of artifacts that visitors and staff have found on site.
- Distribute literature from each site describing preservation practices and instructing visitors on care and appreciation of archeological resources.
- Establish formal associations with nearby colleges, universities, and scholars to tap into current research and interpretation of each site's history.
- Establish a distinct management structure for historic sites, emphasizing accountability and visitor services.
- Establish distinct guidelines for staff selection and desirable advancement opportunities for managers of historic sites.
- Utilize market research experts to provide primary audience data on which to base all marketing strategies.
- Create links with the new Texas State History Museum, the Alamo and other historic properties for sharing of artifacts and information.
- Enhance overall archeological understanding for the TPWD, for both administrative and site staff, to a level equal to history and architecture.
- Assign fees to experiences at each site, thus placing value on the visitor's experience and increasing earned income.
- Create more visitor exhibits by increasing displays of artifacts at historic sites.
- Sell copies of existing archeological reports that are edited for public use.
- Sell quality literature about each site in order to provide the visitor with a keepsake of information and an enticement for others to make the same visit.

- Produce a family of affordable marketing and interpretive materials to increase earned-income performance at each site, and to improve the educational experience provided to visitors.
- Create an identity for historic sites as places of Texas history as opposed to museum collections or recreational areas.
- Expand historical interpretations to tell a more complete story of the sites' significance during applicable eras, and the contributions of important associations and ethnic groups.
- Develop a refurbished interpretation program at each site, for a consistent visitor orientation experience, using state-of-the-art interactive media.
- Analyze all staffed sites not included in this study to determine earned-income potential and appropriate marketing approach.
- Provide appropriate training for all staff, particularly in the areas of historical maintenance, interpretation, and marketing.
- Elevate staff training, with certification, for historical site maintenance and preservation to the high standards already established in other TPWD programs.

Issue 10

Prohibit Promotion of Alcohol and Tobacco in TPWD Operations, Events, and Publications, Including the Hunting and Fishing Regulations Guide.

In recent years, TPWD has accepted funding from alcohol and tobacco companies.

Faced with limited appropriations to provide for Texas' conservation and recreation needs, the Parks and Wildlife Department has looked to outside sponsors to expand its revenue. In recent years, the Department has accepted some funding from alcohol and tobacco companies. Because these sponsorships may inappropriately lead to the increased use of these products by minors, these recommendations look to ensure that the Department does not inappropriately promote alcohol or tobacco in TPWD operations, events, and publications.

Recommendation

Change in Statute

10.1 Prohibit promotion of alcohol and tobacco in TPWD operations, events, and publications, including the fishing and hunting regulations guide.

This recommendation would ban promotion of alcohol or tobacco in TPWD operations, events, and publications, all of which are accessible to or attended by minors.

10.2 Require TPWD to reacquire its fishing regulations booklet, *Texas Parks and Wildlife Outdoor Annual: Official Hunting and Fishing Regulation*, from the outside publisher.

TPWD has a contract for the publication of the hunting and fishing regulations in booklet form with an outside publisher. The contract allows the publisher to accept advertisements from any source without TPWD's approval. In the past, these advertisements have included a number of pages devoted to alcohol and tobacco products. Because the current contract cannot control this content, this recommendation would require TPWD to end its contract and reacquire the publication rights to the *Texas Parks and Wildlife Outdoor Annual: Official Hunting and Fishing Regulation*.

10.3 Transfer TPWD's water safety and law enforcement functions to the Texas Department of Public Safety if the Department continues to do business with alcohol and tobacco companies.

In addition to its duties in providing recreation and conservation opportunities to Texans, TPWD is also a statewide law enforcement agency, with commissioned peace officers and civilian employees enforcing fish, game, and water safety laws. Because alcohol is a factor in many water safety fatalities, a law enforcement agency should not promote the use of this product. Should the Department continue to have ties with alcohol or tobacco companies, this recommendation would transfer its law enforcement functions to the Texas Department of Public Safety.

Issue 11

Require the Department to Conduct a Study of the Texas Gulf Coast Shrimp Resources and Industry.

The Department manages the Texas shrimp industry through the licensing of commercial shrimpers. In recent years, TPWD has exerted greater control over the industry by attempting to limit the number of shrimpers through the repurchase of shrimping licenses and by enacting more stringent regulations on the duration of shrimping seasons. This

recommendation seeks to ensure that the Department's regulatory approach is scientifically based and includes an analysis of its economic impact on the shrimp industry.

Recommendation

Change in Statute

TPWD should be required to conduct a comprehensive study of the Texas Gulf Coast's shrimp resources.

11.1 Require the Department to undertake a comprehensive study of the Texas Gulf Coast's shrimp resources, including the shrimp population, and the shrimp industry.

- Require that the study be done in accordance with the provisions of Parks and Wildlife Code Chapter 77.004 (Research Program), Chapter 77.007 (Regulation of Catching, Possession, Purchase, and Sale of Shrimp), and the TPWD Texas Shrimp Fishery Management Plan.
- Require, by September 1, 2002, that the Department provide a report on the status of the study to the Legislature, including the standing committees of each house having jurisdiction over the Department; and the Parks and Wildlife Commission.

11.2 Require the study to examine the status of the shrimp population in and along the Gulf coast, including the size and projected growth of shrimping beds; the economic health of the shrimping industry; the status of conservation measures, including TPWD regulations and license buybacks; and the status of marine resources and habitats affected by shrimping.

11.3 Require the Department to solicit and consider input from the public, the Gulf Coast shrimp fishing industry, including businesses which are impacted by the shrimping industry, and other marine resource stakeholders during the course of the study.

11.4 Require that future policies and regulations affecting the regulation of shrimping be based on the results of the study or any subsequent study performed in accordance with the guidelines of this recommendation.

11.5 Require TPWD to conduct the study using existing resources appropriated to the Department by the Legislature.

Issue 12

Require the Department to Improve Access to Parks for Disabled Persons.

State Parks are intended to be used by all Texans.

The Texas Parks and Wildlife Department's parks are intended to be used by all Texans. Although the agency has increased the number of facilities for disabled persons in recent years, some parks are not fully accessible.

Recommendation

Management Action

12.1 Texas Parks and Wildlife Department should seek to improve access to parks for disabled persons.

This non-statutory recommendation directs TPWD to enhance its efforts to improve the accessibility of its facilities to individuals with disabilities where appropriate and feasible. The Department could consider including an assessment of accessibility as part of the study required in Issue 1 of this section.

Issue 13

Continue the Texas Parks and Wildlife Department for 12 Years.

Key Findings

- Texas has a continuing interest in protecting its fish and wildlife resources and in providing recreational opportunities.
- The Texas Parks and Wildlife Department has generally accomplished its mission of managing the wildlife, recreational, and cultural resources of Texas.
- No other federal, state, local, or private entity exists that can perform the functions of Texas Parks and Wildlife Department.

Texas Parks and Wildlife Department's mission — to manage and conserve the State's natural and cultural resources for the use and enjoyment of present and future generations — is important to Texans. Although the agency clearly has opportunities to improve its operations, the State has benefitted greatly by TPWD's conservation and recreation programs and no other state or federal agency has the means to provide these resources.

Recommendation

Change in Statute _____

13.1 Continue Texas Parks and Wildlife Department for 12 years.

This recommendation continues the Texas Parks and Wildlife Department for the standard 12-year period until 2013.

Fiscal Implication Summary _____

Five recommendations regarding the Texas Parks and Wildlife Department would have a fiscal impact to the State. They are discussed below, followed by a five-year summary chart.

- Issue 1 Improved decisionmaking from creation of a comprehensive plan for Texas' recreation and conservation resources would result in long term savings; however, the amount of savings will be dependent on the results of the study.
- Issue 5 Requiring business planning and improved oversight of TPWD commercial ventures is expected to result in savings of at least \$200,000 per year.
- Issue 7 Changing funding methods and staffing policies for capital projects would allow greater flexibility for use of general revenue funds. The actual savings of this recommendation, however, would depend upon the number of projects affected and cannot be computed until TPWD implements a method of calculating the total costs of projects.
- Issue 9 Adopting the statutory recommendations of the Cultural Heritage Plan would require a one-time expenditure of \$500,000.

Issue 10 Prohibiting TPWD from accepting promotional funds from alcohol and tobacco companies would cause the loss of these funds. Also, requiring TPWD to break its contract with the outside publisher of the *Texas Parks and Wildlife Outdoors Annual* may cause the agency to lose contract revenues, incur costs for self-publication of the guide, and incur legal expenses. These costs cannot be estimated for this report.

Fiscal Year	Savings to the General Revenue Fund	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$200,000	\$500,000	0
2003	\$200,000	\$0	0
2004	\$200,000	\$0	0
2005	\$200,000	\$0	0
2006	\$200,000	\$0	0

State Pension Review Board



Agency at a Glance

Created by the Legislature in 1979, the State Pension Review Board monitors all state and local public retirement systems for actuarial soundness and compliance with state law. The agency provides the State of Texas with information and recommendations to help ensure that public retirement systems are financially sound, properly managed, distributing benefits equitably, and minimizing employee benefit tax expenditures while still providing for those employees. The Board also provides information to help educate system administrators, trustees, and members.

The Board's major functions include:

- monitoring public retirement systems to uncover potential financial or operational problems and to compare benefits, creditable service, financing, and administration among systems;
- reporting on problems that threaten the actuarial soundness of one or more public retirement systems or inhibit an equitable distribution of benefits;
- providing technical assistance and education on pension planning to public retirement systems; and
- developing information for actuarial impact statements on legislation affecting public retirement systems.

Key Facts

- **Funding.** For fiscal year 2000, the Board had expenditures of \$261,600, with \$227,999, or 87 percent, coming from General Revenue and the remaining \$33,601, or 13 percent, coming from voluntary contributions from public retirement systems.
- **Staffing.** The Board has a full-time staff of five, including an Executive Director, two professional staff, and two administrative staff.
- **Monitoring.** The Board has oversight responsibility over 349 systems. Eight operate statewide and 341 operate locally. The 349 systems:
 - represent a 37 percent increase in the number of systems from fiscal year 1990;
 - had combined assets of \$121 billion in fiscal year 1998, more than triple from fiscal year 1990;
 - served 1.2 million active employees in fiscal year 1998, up 46 percent from fiscal year 1990; and

State Pension Review Board



- served 278,000 annuitants in fiscal year 1998, up 38 percent from fiscal year 1990.
- **Special Reports.** The Board has conducted 12 actuarial studies since 1984. The Board has published reports on timely pension-related issues such as Written Investment Policies for Public Pension Funds, and Guidelines for Actuarial Soundness.
- **Technical Assistance and Education.** An average of 100 pension trustees and others attend the Board's public pension seminars, which cover major topics that affect public retirement systems.
- **Legislative Support.** During the 76th Legislature, the Board tracked 149 bills and companions affecting public retirement systems, and prepared 154 formal impact statements

Board Members (9)

Shari Shivers, Chair (Austin)

William Mahomes, Jr., Vice Chair (Dallas)

Rafael Cantu (Mission)

Leonard Cargill, Jr. (Houston)

Craig Goralski, Sr. (Houston)

Frederick Rowe, Jr. (Dallas)

Rep. Barry Telford (DeKalb)

Sen. John Whitmire (Houston)

Jeanie Wyatt, CFA (San Antonio)

Agency Head

Rita Horowitz, Executive Director, (512) 463-1736

Recommendations

- Eliminate Voluntary Monetary Contributions to the Board from Public Retirement Systems and Fully Fund the Board from General Revenue.
- Specifically Authorize the Board to Require Public Retirement Systems to Submit Summary Information in a Standardized Manner and Form.
- Continue the State Pension Review Board for 12 Years.

Issue 1

Supporting the Board Through Voluntary Contributions from Public Retirement Systems Is Unreliable and May Lead to a Perceived Conflict of Interest.

Key Findings

- The Board's solicitation of voluntary contributions from the public retirement systems it monitors may be perceived as a conflict of interest.
- Most systems do not make contributions, while the remaining systems provide voluntary support at varying levels.
- Total contributions from year to year do not provide a consistent level of support.
- No oversight agency in Texas, or comparable agency in other states, receive voluntary contributions from those entities they oversee, as a means of support.

The Board's reliance on voluntary contributions from public pension systems that it oversees creates a situation in which these systems may feel compelled to contribute, or be seen as trying to buy favor from the agency. Systems also contribute unequally, with only 67 (19 percent) of 349 funds contributing in fiscal year 1999. Finally, total voluntary contributions fluctuate from year to year, making planning and efficient agency administration difficult. Similar agencies in other states do not rely on voluntary contributions, but on state revenues or assessments on public pension systems.

Replacing voluntary contributions with additional General Revenue would reflect the agency's role as an independent source of information for pension-related legislation. Because public pension systems do not receive direct services from the Board, assessments on their funds would be difficult to justify.

Recommendation

Change in Statute

- 1.1 Eliminate voluntary monetary contributions to the Board from public retirement systems and fully fund the Board from General Revenue.**

Eliminating voluntary contributions by pension systems would require additional General Revenue funding to maintain current funding levels.

This recommendation would require the Legislature to appropriate an additional \$45,000 in General Revenue each year if it wished to maintain current funding levels for the Pension Review Board.

Issue 2

The Board Does Not Receive Essential Monitoring Information in a Standard Format, Making Data Entry Time-Consuming and Prone to Error.

Key Findings

- The Board is not specifically authorized to require information from public retirement systems in a standardized format.
- The Board spends much time and effort extracting monitoring information from these reports submitted in a variety of formats.
- Some other agencies in Texas, and other states, receive pension-related information in standardized formats.

The Board monitors about 350 public retirement systems, analyzing the information in required reports that systems submit in a variety of formats. The Board estimates that more than 10 percent of the systems the Board reviews do not submit information in a form that can be easily used. Consequently, the Board must spend time and effort extracting and interpreting data, or contacting systems' staff for clarification. Authorizing the Board to require information in a summary form would not only clarify the agency's authority and make the review process more efficient, but would also help to reduce errors and allow the agency to take advantage of electronic reporting technology.

Recommendation

Change in Statute

2.1 Specifically authorize the Board to require public retirement systems to submit summary information in a standardized manner and form.

Under this recommendation, the Board would develop a standardized one- to two-page summary document to be included with the annual reports currently required of public retirement systems. The summary document would include the information and measures that the Board determines most necessary to quickly judge the actuarial and financial conditions of these systems. To not overly burden any particular system, the summary document would require the minimum amount of

information the Board needs to efficiently assess a system's health. Much of the information reported in the summary document is not expected to change significantly from year to year. The Board may need to assist smaller systems with the form until they become familiar with it. The Board could place this form on the Internet to make standardized reporting easier for these systems. Finally, the Board should occasionally verify the information that systems provide on the summary document.

Issue 3

Texas Has a Continuing Need for the State Pension Review Board.

Key Findings

- The Board serves primarily as an early warning system to identify public pension systems that may experience financial problems and as an independent source of information for the Legislature on pension-related legislation.
- The agency's monitoring and informational functions have resulted in benefits to public pension systems and the Legislature.
- No substantial benefits would result from transferring the Board's functions to another agency.
- Various other states also have affirmed the need for oversight of public pension systems by assigning oversight functions to state entities.

The State Pension Review Board has served the needs of Texans and the Legislature. The agency has helped uncover and resolve problems involving thousands of pension members and billions of dollars. The Legislature also has benefitted from the independent actuarial analyses and pension-related information received from the Board. As an independent executive branch agency with relevant actuarial, financial, and legislative expertise on its board, the State Pension Review Board is well structured to perform its assigned functions.

Texas will benefit from continuing the agency, given the growth in public pension systems and the importance of maintaining their financial viability. Since the agency's Sunset review in 1991, the number of systems the Board oversees has increased from 254 with total assets of \$35 billion, to about 350 with assets of \$121 billion in fiscal year 1998. In addition, a continuing need exists for independent actuarial analysis of pension-related legislation.

Recommendation

Change in Statute _____

3.1 Continue the State Pension Review Board for 12 years.

This recommendation continues the State Pension Review Board for the standard 12-year period until 2013.

Fiscal Implication Summary _____

One recommendation would have a fiscal impact to the State. It is discussed below, followed by a five-year summary chart.

Issue 1 Eliminating the voluntary monetary contributions to the Board from public retirement systems would cause an annual loss of \$45,000 to the State Pension Review Board Fund. This change would require a comparable appropriation from the General Revenue Fund each year to maintain current funding levels.

Fiscal Year	Loss to the State Pension Review Board Fund
2002	\$45,000
2003	\$45,000
2004	\$45,000
2005	\$45,000
2006	\$45,000

Office for the Prevention of Developmental Disabilities



Office at a Glance

In 1989, the Legislature created the Texas Office for the Prevention of Developmental Disabilities (TOP), and directed the Office to focus prevention efforts on high-risk behavior among teenagers. TOP's purpose, as defined in statute, is to help minimize the human and economic losses in Texas caused by preventable disabilities. The agency's duties include coordinating the activities of public and private organizations involved in prevention activities; raising awareness on the preventability of many disabilities; monitoring and assessing prevention programs; and promoting innovative programs.

Key Facts

- **Funding and Staffing.** Through a rider to the Appropriations Act, the Legislature directed the Texas Department of Mental Health and Mental Retardation (TDMHMR) to fund TOP an amount not to exceed \$120,000 per year for the 2000-2001 biennium. In fiscal year 2000, TDMHMR allocated \$109,692 from the agency's indirect administration budget to fund the Office. Of those moneys, TOP spent \$101,036. TOP employs two full-time staff, an Executive Director and an administrative assistant.

Executive Committee Members (9)

Governor's Appointments	Lt. Governor's Appointments
J.C. Montgomery, Jr. (Dallas)	Senator Judith Zaffirini (Laredo)
Dr. Jonathan Clark Race (Austin)	Dr. Theresa Mulloy (Stephenville)
Dr. Marian Sokol (San Antonio)	Vacant

Speaker's Appointments
Representative Bill Carter, Chair (Fort Worth)
Eileen Curry Resnik (Addison)
Lanny Voss (Plainview)

Agency Head

Larry Camp, Executive Director (512) 206-5869

Recommendation

- Continue the Texas Office for the Prevention of Developmental Disabilities as a Separate State Agency Administratively Attached to the Texas Department of Mental Health and Mental Retardation.

Issue 1

Continue the Texas Office for the Prevention of Developmental Disabilities as an Independent Agency Administratively Attached to TDMHMR.

Key Findings

- In 1999, the Sunset Commission reviewed the Office and found a continuing need for this state entity.
- The current administrative attachment of the Texas Office for Prevention of Developmental Disabilities to TDMHMR is successful and appropriate.

Recommendation

Change in Statute

1.1 Continue the Texas Office for the Prevention of Developmental Disabilities as a separate state agency administratively attached to the Texas Department of Mental Health and Mental Retardation.

This recommendation would maintain TOP's link to TDMHMR for administrative support.

1.2 Repeal the separate Sunset provision for the Office and allow it to be reviewed in conjunction with TDMHMR.

This recommendation would allow the Sunset Commission to review TOP as part of the next Sunset review of TDMHMR in 2011, eliminating the need for a separate evaluation of this individual office.

Railroad Commission of Texas



Agency at a Glance

The Railroad Commission of Texas (RRC) protects the state's natural resources, the environment, and public safety through the regulation of the oil and natural gas industry, pipeline transporters, natural gas utilities, rail safety, and surface mining operations. In 1891, the Legislature, under constitutional authority, established the Commission with jurisdiction over rates and operations of railroads, terminals, wharves, and express companies, providing the basis for the agency's name.

The agency's major functions fall into the following categories.

- Assuring that the state's fossil fuel energy production, storage, and delivery is conducted to reduce harmful effects on the environment and to preserve natural resources. Activities include:
 - regulating all aspects of oil and gas exploration and production;
 - managing pollution prevention programs related to oil and gas production, including well plugging and site remediation; and
 - regulating coal and uranium surface mining.
- Advancing safety in the delivery and use of the state's petroleum energy products and in the operation of the state's rail system. Activities include:
 - enforcing state and federal intrastate pipeline safety regulations;
 - regulating the liquefied petroleum gas (LPG), compressed natural gas (CNG), and liquefied natural gas (LNG) industries; and
 - inspecting and enforcing state and federal rail safety regulations, including railroad crossing safety education.
- Providing equal and fair energy access, ensuring fair gas utility rates, and promoting research and education on use of alternative fuels. Activities include:
 - protecting correlative rights and preventing waste of oil and gas resources;
 - regulating gas utilities, including setting and auditing rates for gas utility services; and
 - supporting education and research into promoting the use of propane as an alternative fuel in the state.



Key Facts

- **Funding.** The Commission's budget for FY 2000 was approximately \$52.3 million. General Revenue comprises \$24.8 million, or 47 percent of the agency's budget. Other revenue sources include the Oil Field Cleanup Fund of \$14.7 million, or 28 percent, and federal funds of \$7.3 million, or 14 percent.
- **Staffing.** The Commission has approximately 786 employees, with 516 at the agency's headquarters in Austin and 270 in the agency's 15 regional and district offices.
- **Oversight.** Three statewide elected officials govern the Commission, who serve staggered six-year terms. The Commissioners elect their Chair.
- **Resource Allocation.** Approximately 68 percent of the agency's staffing resources (direct and indirect) are allocated for oil and natural gas production regulation, 17 percent to pipeline, LPG, CNG, LNG, and natural gas utilities regulation, 4 percent to promote LP-Gas usage, 8 percent to coal and uranium mining regulation, and the remaining 3 percent to rail industry regulation.
- **Workload.** RRC monitors more than 355,000 oil and gas wells and 3,400 related facilities throughout the state. Over 85 percent of the counties in Texas currently have reported oil production and 74 percent have natural gas production. RRC has used the Oil Field Cleanup Fund to plug more than 16,500 abandoned wells. Texas currently has more than 100,000 inactive wells. Texas has more than 280,000 miles of pipelines within the state, 157,000 of which are under the Commission's direct jurisdiction. RRC oversees 21 permits to mine coal in Texas, covering 16 active mines with more than 255,000 acres of permitted coal mining operation. The state has one uranium surface mine currently in final reclamation. Texas has 10,713 miles of mainline railroad track, the most of any state in the nation.

Commission Members (3)

Michael Williams, Chair

Charles Matthews

Tony Garza

Agency Heads

Director of Energy Operations: Ron Kitchens, (512) 463-7068

Director of Finance and Administration: Kathy Pyka, (512) 463-7257

Railroad Commission of Texas



Recommendations

- Increase Revenues to the Oil Field Cleanup Fund to Meet the State's Current and Anticipated Liability.
- Improve Financial Assurance Requirements and Enforcement to Address the Problem of Abandoned Wells and Polluted Sites.
- Provide Incentive to Landowners and Developers to Clean Up Contaminated Oil Field Sites.
- Require Clear Risk Assessment Standards for Site Remediation Efforts.
- Enhance State Regulation of Pipelines.
- Transfer Gas Utility Rate Cases to the State Office of Administrative Hearings.
- Adopt a Program to Assist Lower Income Households with Gas Utility Bills.
- Implement Mandatory Unitization for Oil and Gas Production.
- Continue the Railroad Commission of Texas for 12 Years.

Issue 1

The Structure of the Oil Field Cleanup Fund Is Insufficient to Meet the State's Current and Anticipated Liability.

Key Findings

- The State has a significant inventory of abandoned wells and sites needing cleanup.
- The current funding structure does not allow the State to adequately address its current and future oil field pollution liability.
- Improved business practices and documentation of Fund activities would increase performance and industry acceptance.

The current funding structure of the Oil Field Cleanup Fund is insufficient to meet the State's current and anticipated obligations with regard to abandoned wells and oil field sites. Through a revised goal-setting process and fee structure, the Commission can more aggressively deal with this problem. The recommendation to allow better documentation of and access to expenditure information will help ensure industry fees are appropriately used for plugging and cleanup. Establishing new fee amounts by statute would raise additional funding needed to do more to address oil field pollution in the state. The recommendation on alternative options for well plugging contracts could save both the Commission and contractors time and effort and reduce administrative costs. With recommendations in Issue 2 of this report section, to improve operator financial security requirements to reduce the burden to the State from abandoned wells and sites, these changes will better prepare the State to deal with those wells and sites that ultimately become its responsibility.

The current funding structure of the Oil Field Cleanup Fund does not allow the State to adequately address oil field pollution liability.

Recommendation

Change in Statute

- 1.1 Require the Commission, through the Legislative Appropriations Request process, to re-establish specific performance goals for the Oil Field Cleanup Fund.**

This recommendation would require the Commission to work with the Legislative Budget Board each biennium to determine appropriate goals for well plugging and site remediation. The new performance goals

should be phased in over time. The availability of well pluggers and state procurement requirements are two factors that affect the number of well pluggings the Commission can reasonably achieve. Site remediation efforts should be measured in dollars, rather than the number of sites cleaned up, due to wide range of sites and the difficulty in accurately forecasting potential cleanup costs.

1.2 Expand statutory provisions relating the Oil Field Cleanup Fund to increase funding for cleanup activities.

Additional revenue to the Oil Field Cleanup Fund will enable the Commission to plug more abandoned wells.

This recommendations would raise the cap on the Oil Field Cleanup Fund to \$20 million with a \$10 million lower threshold to restart collections of oil field regulatory fees. It would also require the Commission to set fee amounts not to exceed the following prescribed amounts, to support enhanced performance goals for activities supported by the Oil Field Cleanup Fund.

- Institute a new fee for the annual organizational report filed with the Commission (P-5 Report) to raise an additional amount, not to exceed \$3.0 million per year.
- Increase the fee for new drilling permits to raise an additional amount, not to exceed \$1.5 million per year.
- Increase oil field cleanup regulatory fees, not to exceed 1 cent per barrel of oil and 0.1 cent per MCF of natural gas.
- Increase the well plugging extension (W-1X) fee, not to exceed \$300.

Additional revenue to the Fund would enable the Commission to plug more abandoned wells and clean up more polluted sites. Further, new fee levels should make up revenue lost by any changes to financial assurance requirements (Issue 2), revenue for oversight of voluntary cleanups (Issue 3), and revenue for integrity testing of wells (Issue 4).

1.3 Require the Commission to maintain detailed expenditure reports for the Oil Field Cleanup Fund, and make those reports available to the public.

This recommendation would require the Commission to include, as part of the Fund’s annual report, a detailed explanation on how it spends money from the Fund, including a detailed accounting of Fund expenditures for cleanup activities, including contract amounts, and wells and sites cleaned up, broken out by region. The report should also included a detailed accounting of the agency’s expenditures, including amounts for staff salaries and other administrative expenses.

Management Action

1.4 The Commission should explore a range of improved business practices to expand well plugging efforts.

To meet increased performance goals, the Commission should continue its current efforts to plug as many wells as possible under any one contract. Further, the Commission should expand its efforts to provide technical guidance to bidders to help them comply with state procurement requirements. Finally, the Commission should consider a risk-based approach to the use of field inspectors to witness well pluggings, balancing the need for oversight and accountability with the need to meet increased performance goals.

Issue 2

Without Adequate Financial Assurance and Enforcement, the State Will Continue to Be Burdened with Abandoned Wells.

Key Findings

- Current financial security options have not been effective at curbing the increase in abandoned wells and sites, leaving them to be plugged and cleaned up by the State.
- The State's informal enforcement efforts do not adequately address some serious pollution violations.
- The Commission, and other states, have recognized the need to do more to hold operators responsible for the threat their activities pose to the environment.

The Commission's recent rule change regarding well plugging extensions went as far as the current law allows. The Commission should continue the move toward a system that guarantees adequate financial assurance from all operators. By phasing in universal bonding, oil and gas operators, the surety industry, and the Commission can address any barriers to making bonds widely available at reasonable cost. The phase-in period will allow the Legislature to make any needed changes to the program in the 2003 legislative session.

While bonding provides up-front security against the threat of pollution, adequate enforcement is the other key component in ensuring protection of the state's land and water resources. State-funded plugging and cleanup will be effective only if the Commission aggressively

The Commission should continue to move toward a system that guarantees adequate financial assurance from all operators.

enforces current laws and rules, so that new wells and sites do not enter the system. Finally, although currently statutorily required to do so, the Commission should redouble efforts to deny permits to ineligible operators and address long-standing inadequacies in its enforcement function.

Recommendation

Change in Statute _____

2.1 Phase in universal bonding of oil and gas operators by September 1, 2004.

This recommendation would give the Commission statutory authority to phase in a requirement that every operator filing an organization report executes and files a bond with the Commission. This recommendation would not change the current law allowing an operator to choose an individual performance bond or a blanket performance bond covering all operations. However, this recommendation would add a Commission-managed risk pool to the available options. This recommendation would repeal the \$100 a year “good guy option” and first lien option, but maintain the three percent fee as an alternative option for three years from the effective date of legislation. Further, this recommendation would require immediate bonding before transfer of an inactive well, and increased bond amounts for bay and offshore wells. Finally, this recommendation would require the Commission to evaluate the impact of changes to financial assurance requirements on the Oil Field Cleanup Fund.

Management Action _____

2.2 The Commission should ensure that ineligible operators are denied drilling permits, and that responsible parties are held accountable for violations.

Although currently statutorily required to do so, the Commission should redouble efforts to deny, suspend, or revoke permits to ineligible applicants, focusing not only on the operator of record, but also on owners, officers, and directors. Further, the Commission should pursue all legally responsible parties in a cost-effective manner to recover the cost of plugging or cleanup, with state funds to be used only as a last resort. Finally, the Commission should take all necessary steps to improve its information tracking systems, and develop a formal, centralized system to track high-risk operators for inspection and enforcement purposes. Risk should be based on prior compliance history, including violations resolved at the district level.

Issue 3

Landowners and Developers Do Not Have Sufficient Incentive to Clean Up Contaminated Oil Field Sites.

Key Findings

- The State has a significant number of unremediated oil fields.
- The State has limited resources with which to address site remediation.
- Other state agencies have voluntary cleanup programs to help reduce the inventory of sites awaiting cleanup.

Limited funding and increased cleanup costs hinder the Commission's ability to adequately address the state's active and abandoned oil fields in need of remediation. Potential for privately funded oil field remediation is emerging as the population in Texas swells and suburban development encroaches into rural areas. By releasing landowners from future liability, the Commission can tap into extra resources from developer-funded cleanups on oil fields that may otherwise become the State's responsibility to remediate.

Developer-funded cleanups would address sites that may otherwise become the State's responsibility to remediate.

Recommendation

Change in Statute

3.1 Authorize the Commission to create a voluntary cleanup program, separate from the operator cleanup program, which allows landowners and developers to be statutorily released from liability for future cleanup costs.

This recommendation would authorize the Commission to establish by rule a voluntary cleanup program, providing landowners and developers with statutory release of liability for future cleanup costs. The Commission would be allowed to charge a processing and review fee, deposited in the Oil Field Cleanup Fund, to defray expenses. This recommendation should be contingent upon the agency's adoption of a risk assessment rule (Issue 4), which will ensure that the Commission's site remediation program is not expanded without instituting clear cleanup measures. Program staff would work closely with potential participants in developing cleanup plans and providing technical oversight during the cleanup process. The agency should consult with TNRCC, which as stated previously, operates a similar program for remediation.

Issue 4

The Commission's Site Remediation Efforts Lack Clear Risk Assessment Standards and Miss Opportunities for Pollution Prevention.

Risk assessment standards tailor cleanup levels to prevent adverse effects to people or the environment.

Key Findings

- Lack of a standard risk assessment rule hampers the ability of operators and the Commission to protect the environment.
- Lack of monitoring of abandoned wells for leaks limits the Commission's ability to protect the environment.
- TNRCC has recently adopted base-level risk assessment standards for consumers and regulators to use in site remediation.

The Commission's process for addressing a growing number of contaminated and unremediated oil field sites has been hampered by the lack of a risk assessment rule. Once a spill occurs, a risk assessment is conducted that tailors cleanup levels to prevent adverse effects to people or ecosystems from contaminant exposure. Without a risk assessment rule, private operators and contractors spend extra time speculating which cleanup standards to apply to a particular remediation. In addition, the Commission does not conduct testing on abandoned wells under its own purview, affecting its ability to identify wells that may be contaminating surface water or groundwater, which should be prioritized for State-funded plugging.

These recommendations would improve the Commission's ability to assist operators and contractors in cleaning contaminated oil field sites and preventing additional contamination, when possible. The targeted testing of abandoned wells could prevent problems from leaking wells causing additional contamination that will need remediation.

Recommendation

Change in Statute

4.1 Require the Commission, by rule, to establish a risk-based assessment to guide remediation efforts.

This recommendation would require the Commission to establish risk assessment as the guide for assessing and remediating contaminated oil and gas sites. The rule should include the following:

- determining if an actual or potential risk exists at a site;
- screening contaminants at the site to identify those that pose a risk;
- developing cleanup standards based on contamination levels that are protective of human health and the environment, and preserve the active and productive use of the land; and
- establishing a reporting mechanism for informing the Commission regarding specific remediation activities.

4.2 Require the Commission to prioritize testing of high-risk abandoned wells under its jurisdiction.

This recommendation would not require annual testing of each well, but would require the Commission to identify abandoned wells in the State's inventory that have a higher risk of contaminating surface water or groundwater and determine the need to test those wells. The prioritization system should include an evaluation of whether a fluid level test is adequate or whether a more expensive pressure test is needed. High-risk wells with compromised casings should be prioritized for plugging in the Commission's Well Plugging Program.

Issue 5

State Regulation of Pipelines Lacks Provisions to Ensure a Consistent and Comprehensive Regulatory Approach.

Key Findings

- The Commission does not have a consistent structure to use administrative penalties for the enforcement of pipeline safety regulations.
- The Commission lacks authority to require pipeline operators to submit testing or assessment plans for Commission approval.
- The Commission should revise its policies on pipeline safety enforcement and place this information, including the disposition of enforcement cases, on the Internet.

The recommendations would standardize the Commission's procedures for taking administrative enforcement action against pipeline operators to help ensure enforcement is consistent and fair. The public, and pipeline operators, would have better access to Commission enforcement policies, and the final disposition of enforcement actions,

The Commission does not have a consistent structure to use for the enforcement of pipeline safety regulations.

by posting this information on the Internet. The Commission would be better able to assess the relative safety of pipeline systems by requiring pipeline operators to submit testing or assessment plans for Commission approval.

Recommendation

Change in Statute _____

5.1 Specify that the Commission shall include certain standard elements in its penalty structure for pipeline safety violations.

The Commission would develop a set of penalties, and a more standardized process for administering penalties for pipeline safety violations. The penalty structure could include amounts for specific violations, criteria for deferments, and enhanced penalties depending on the level of safety hazard, level of pollution, number of repeat violations, operator culpability, and failure to participate in a special investigation or submit a required assessment plan.

5.2 Authorize the Commission to require a pipeline operator to submit an assessment or testing plan for Commission approval.

The Commission would be authorized to require a pipeline operator to file a pipeline assessment or testing plan for Commission approval. The Commission would require that such a plan consist of certain elements such as identification of risk factors associated with a pipeline system including population density, prior inspection data, pressure test data, leak data, operating characteristics, corrosion protection methods, and other data that may assist with the assessment. The Commission would approve plans addressing those elements and meeting a standard for completeness.

Management Action _____

5.3 The Commission should create an enforcement coordinating function within the Pipeline Safety Section.

This recommendation would help ensure the Commission has adequate quality control measures in place for preparing enforcement cases, and ensuring inspectors follow consistent practices when referring a case for enforcement, or when requiring technical assistance on violations.

5.4 The Commission should revise its current policies on pipeline safety enforcement procedures, and post this information on the Internet, including the final disposition of enforcement cases.

This recommendation would allow the Commission to ensure the regulated community, and general public, is informed about the enforcement process and the outcome of enforcement cases.

Issue 6

Gas Utility Rate Cases Should Be Conducted by the Independent State Office of Administrative Hearings.

In 1991, the Legislature created the State Office of Administrative Hearings (SOAH) to conduct administrative hearings for state agencies. The Legislature has routinely transferred the hearings functions of state agencies to SOAH when such transfer would improve the independence, quality, or cost-effectiveness of the hearing. Currently, SOAH conducts utility rate hearings for the Public Utility Commission and the Texas Natural Resource Conservation Commission. However, the Railroad Commission conducts its gas utility rate hearings in-house.

The Legislature has routinely transferred hearing functions of state agencies to the State Office of Administrative Hearings.

Recommendation

Change in Statute

6.1 Transfer gas utility rate cases conducted by the Railroad Commission to the State Office of Administrative Hearings.

This recommendation would transfer gas utility rate cases conducted by the Commission to the State Office of Administrative Hearings. The Commission would continue to handle contested cases related to permitting and enforcement through its internal hearing processes.

Issue 7

The Railroad Commission Should Do More to Assist Lower Income Households with Gas Utility Bills.

In the recent past, the price of natural gas has been low and home heating bills have been much lower than electric bills. However, the sharp rise in natural gas prices has caused a corresponding increase in home heating bills. The Public Utility Commission currently administers a System Benefit Fund, part of which is used to help finance programs to assist qualifying low-income families in paying their electric bills.

Recommendation

Change in Statute _____

7.1 Adopt a program to assist lower income households with gas utility bills.

This recommendation would require the Railroad Commission to create and administer a program to assist qualifying low-income families in paying gas utility bills. The program could be modeled after the System Benefit Fund at the Public Utility Commission, which receives revenue from electric utility customers. Customer assistance funds for gas utility bills could similarly be supported by fees collected from all gas utility customers based on usage of natural gas.

Issue 8

The Railroad Commission Lacks Specific Authority to Coordinate Oil and Gas Production.

Unitization seeks to coordinate the recovery of oil and gas from common fields in an equitable and reasonable manner.

Unitization seeks to coordinate the recovery of oil and gas from common fields in an equitable and reasonable manner that prevents waste, promotes conservation of natural resources, and protects correlative rights of the owners. Many oil and gas producing states, including New Mexico, Oklahoma, and Louisiana, have mandatory unitization statutes.

Recommendation

Change in Statute _____

8.1 Implement Mandatory Unitization for Oil and Gas Production.

This recommendation would require the Railroad Commission to promulgate and implement regulations by January 1, 2002 to ensure proper payment of royalties, maximize the recovery of oil, and prevent waste. These regulations must include procedures to protect the correlative rights of any participating working interest owner, non-

participating working interest owner, unleased mineral owner and royalty owner in any application by a participating working interest owner to the Railroad Commission for any waterflood, enhanced oil recovery project or tertiary recovery project of a common source of supply or a part thereof. The regulations shall set out the terms of the application. The regulation shall provide that after notice and hearing, the Railroad Commission shall commit 100 percent of the working and royalty interest to the approved plan of operation for the waterflood, enhanced oil recovery project or tertiary recovery project upon showing by the participating working interest owner that the plan of operation is equitable and reasonable and it prevents waste, promotes conservation of natural resources and protects correlative rights of the owners in the common source of supply. In the promulgation of rules and regulations the Railroad Commission shall take into consideration those procedures used by agencies or commissions of other states having similar authority over the regulation of oil and gas matters.

Issue 9

Texas Has a Continuing Need for the Railroad Commission.

Key Findings

- Texas has a continuing interest in protecting natural resources, consumer interests, and the quality of the environment.
- Although other governmental entities can perform the Commission's core functions, each has drawbacks.

The Railroad Commission of Texas' mission — to protect the state's natural resources, the environment, and public safety through the regulation of the oil and natural gas industry, pipeline transporters, natural gas utilities, rail safety, and surface mining operations — is important to the State. As the oil and gas industry matures, the Commission's role in plugging abandoned wells and cleaning oil field sites becomes more important.

Texas has a continuing interest in protecting natural resources, consumer interests, and the quality of the environment.

Recommendation

Change in Statute _____

9.1 Continue the Railroad Commission of Texas for 12 years.

This recommendation continues the Railroad Commission of Texas for the standard 12-year period until 2013.

Fiscal Implication Summary _____

This report contains several recommendations that would have a fiscal impact to the State. They are discussed below.

- Issue 1 Increasing fees and raising the cap on the Oil Field Cleanup Fund to fund increased oil field cleanup performance goals will result in an annual revenue gain of approximately \$12 million to the Oil Field Cleanup Fund. The exact amount of this gain will depend on the actual fee amounts set by the Commission to meet the performance targets for well plugging and site cleanup and other costs to the Fund anticipated from the other Issues in this report section. These revenue gains will be offset by increased expenditures for well plugging and site cleanup.

- Issue 2 Requiring universal bonding of oil and gas operators could have a negative fiscal impact to the Oil Field Cleanup Fund depending on how future financial assurance requirements are structured. This loss would be offset by the increased revenue generated from the recommendations included in Issue 1 of this report section.

- Issue 3 Creating a voluntary cleanup program will require the Commission to hire staff to oversee and monitor voluntary cleanups. The actual cost will depend on how many landowners choose to participate in the program and cannot be estimated at this time. These costs would be funded through the Oil Field Cleanup Fund.

- Issue 4 Allowing the Commission to test certain abandoned wells based on risk could be a cost to the State depending on the number of wells that may require testing. Well testing costs range from \$150 to \$1,000 per well, depending on the type of test required. Any additional costs based on this recommendation would be funded through the Oil Field Cleanup Fund.

- Issue 5 Establishing an enforcement coordinator to assist in pipeline regulations could have additional costs if the Commission seeks an additional position to fulfill this purpose.
- Issue 6 Transferring gas utility rate cases conducted by the Commission to the State Office of Administrative Hearings would be an additional cost to the agency resulting from interagency SOAH billings for the cost of conducting hearings. The actual cost will depend on the number and complexity of hearings conducted and cannot be estimated at this time.
- Issue 7 Adopting a program to assist lower income households with gas utility bills could result in a revenue gain to the State from fees collected to support the program from all gas utility customers based on usage of natural gas. The amount cannot be estimated since the ultimate program design is unknown.

Savings and Loan Department



Department at a Glance

The Texas Savings and Loan Department protects the depositors of Texas by ensuring the safe and sound operation of state-chartered thrifts. In 1999, the Legislature also gave the Department responsibility for licensing mortgage brokers.

Key Facts

- **Funding.** The Department's \$1.2 million annual budget in FY 2000 came from the General Revenue Fund and appropriated receipts. The Department contributed \$3.5 million to the General Revenue Fund from fees that year.
- **Staffing.** The Department currently employs 22 FTEs. Sixteen work in the Austin office. Six examination staff work in various locations around the state and designate their homes as their headquarters.
- **Savings and Loan Regulation.** The Department currently regulates 26 state-chartered thrifts in Texas. The Department charters new thrifts, conducts regular examinations of thrifts, initiates enforcement actions, and reviews applications for changes to charters.
- **Regulation of Mortgage Brokers and Loan Officers.** The Mortgage Broker License Act of 1999 established Texas' first licensing requirement for first lien mortgage brokers. As of December 2000, the Department had licensed 9,258 mortgage brokers and their loan officers.

Commission Members (9)

The Department is overseen by the Finance Commission, which also oversees the Department of Banking and the Office of Consumer Credit Commissioner.

W.D. Hilton, Jr., Chair (Greenville)

Vernon Bryant, Jr. (Weatherford)

Jacqueline G. Humphrey (Amarillo)

Deborah H. Kovacevich (Jewett)

Marlene Martin (San Antonio)

Manuel J. Mehos (Houston)

Victor (Buddy) Puente, Jr. (Pantego)

John Snider (Center)

Robert V. Wingo (El Paso)

Savings and Loan Department



Agency Head

Randall James, Banking Commissioner, (512) 475-1353

Recommendations

- Continue the Savings and Loan Department for 12 Years.
- Improve Mortgage Broker Regulation by Requiring FBI Background Checks; Authorizing Routine Inspections and Agency-Initiated Investigations for Cause; and Developing a System for Addressing Complaints by Severity.

Issue 1

Texas Has a Continuing Need for the Savings and Loan Department.

The Savings and Loan Department monitors the safety and soundness of state-chartered savings banks and savings and loans to ensure that they remain solvent and that the deposits of Texas consumers remain protected. State-chartering provides a valuable alternative to a national charter for certain savings banks and savings and loans operating in Texas. In addition, the Department licenses mortgage brokers to protect consumers from illegal, deceptive or misleading trade practices. The Sunset Commission concluded that the Department should be continued as an independent agency for 12 years.

Recommendation

Change in Statute

1.1 Continue the Savings and Loan Department for 12 years.

This recommendation continues the Savings and Loan Department for the standard 12-year period until 2013.

Issue 2

The Department Lacks Certain Key Components to Effectively License and Investigate Mortgage Brokers.

Key Findings

- The Department has been unable to obtain FBI background checks for potential licensees because the statute authorizes such checks, but does not require them.
- State law does not authorize routine inspections and severely limits the Department's authority to initiate an investigation of a mortgage broker unless a formal complaint has been filed.
- The Department does not rank consumer complaints it receives by severity.

The Department needs clearer authority to obtain FBI background checks for potential mortgage broker licensees.

The recently passed Mortgage Broker Licensing Act provides needed regulation of mortgage brokers and loan officers who make or arrange first lien mortgage loans. However, several aspects of the Act, if modified, would enable the Department to better carry out the intent of the Act.

Recommendation

Change in Statute _____

2.1 Change the agency's authority to obtain criminal background information from the Federal Bureau of Investigation from optional to mandatory.

This recommendation would ensure the Department's ability to obtain background checks from the FBI to prevent people with a criminal history in another state from moving to Texas and becoming a mortgage broker. If the information has not been obtained within 30 days, the Department should issue a provisional license to applicants who meet all the other requirements for licensing. If the information has not been obtained within 90 days, the provisional license should become permanent unless the Department initiates a proceeding to revoke it.

2.2 Authorize the Department to conduct routine inspections of mortgage brokers and to initiate investigations on its own when reasonable cause exists.

This recommendation would allow the Department to conduct routine inspections of mortgage brokers and to actively pursue known violations, even when a formal complaint has not been filed. The Department should develop rules and guidelines to govern both routine inspections and agency-initiated investigations, including what would constitute reasonable cause for an investigation.

Management Action _____

2.3 Require the Department to implement a consumer complaint system that ranks complaints according to the order of initial receipt and severity of the alleged violation.

This recommendation would ensure consumer complaints are responded to appropriately, based on when they are received and the immediacy of the problem presented.

The Department needs authority to regularly inspect mortgage brokers and to initiate investigations when reasonable cause exists.

Fiscal Implication Summary _____

The recommendations regarding the Savings and Loan Department would have no impact on the State. Some costs could be tied to conducting routine inspections of mortgage brokers, but would be offset through licensing fees and have no net impact on General Revenue. These costs would depend on how the agency structured the inspection process.

State Securities Board



Agency at a Glance

The mission of the Texas State Securities Board (SSB) is to protect investors from securities fraud to assure that businesses in Texas have access to capital. To achieve its mission, the agency registers securities offerings, licenses and inspects securities professionals, investigates fraudulent securities offerings, and enforces violations of the Securities Act. The State Securities Board cannot and does not attempt to regulate the risks inherent in securities dealings, but acts to ensure that all risks and other important facts relevant to a securities purchase are disclosed.

Key Facts

- **Funding.** The State Securities Board's funding for fiscal year 2000 was about \$3.5 million. While all of the agency's revenue comes from the General Revenue Fund, in fiscal year 2000, the agency collected about \$134 million more in fees than it expended.
- **Staffing.** The State Securities Board employs 81 full-time employees – 67 working in the Austin headquarters, and 14 located in the Dallas, Houston, Corpus Christi, and Lubbock enforcement field offices.
- **Securities Law Enforcement.** Investigating and prosecuting violations of securities laws accounts for about one-third of the agency's budget. The agency focuses on obtaining indictments against individuals who violate the Securities Act. Agency staff assist prosecutors by forwarding them complete investigations and participating in all phases of trials.
- **Securities Dealers Registration.** The agency requires securities dealers, investment advisers, and their agents, to register to ensure that they meet minimum standards of conduct and financial solvency.
- **Dealer Inspections.** The agency inspects securities dealers and investment advisers to ensure compliance with the Securities Act and Board rules.
- **Registration of Securities Offerings.** The agency reviews all applications to register securities for sale in Texas to ensure investor access to full and fair disclosure of all material investment information. The agency also helps ensure that both the promoter and investor share in the results of the venture, that conflicts of interest are minimized, and that promotional expenses are reasonable.

State Securities Board



Board Members (3)

Nicholas C. Taylor, Chair (Midland)

Jose Adan Trevino (Bellaire)

Kenneth W. Anderson, Jr. (Dallas)

Agency Head

Denise Voigt Crawford, Securities Commissioner, (512) 305-8300

Recommendations

- Expand the State Securities Board From Three to Five Public Members.
- Strengthen SSB's Enforcement Authority by Establishing Corporate Criminal Penalties, Civil Liability Against Investment Advisers, and Emergency Cease and Desist Orders.
- Specify that SSB Has the Authority to Inspect Securities Dealers and Investment Advisers.
- Specify that Investor Education Is a Function of the State Securities Board.
- Create Separate Definitions in the Securities Act for Securities Dealers, Investment Advisers, and Their Agents.
- Continue the State Securities Board for 12 Years.

Issue 1

The Small Size of the State Securities Board Limits Its Effectiveness and Communication Among Its Members.

Key Findings

- The small size of the State Securities Board limits its effectiveness and internal communication.
- The Legislature has acted to create state agency governing bodies of an adequate size.

The work of the State Securities Board in regulating the Texas securities market is hampered by its small size. As a three-member policy body, members of the Board cannot informally discuss the work of the agency without violating the Open Meetings Act. The Board also cannot form subcommittees to help it oversee the agency. In view of these problems, the Legislature has acted to form larger policy bodies for the majority of state agencies; has increased the size of other three-member boards; and, with voter approval, has recently amended the Constitution to allow greater flexibility in creating agency boards. The Sunset review examined the work of the Securities Board and concluded that the addition of more members would allow it to operate more effectively.

Recommendation

Change in Statute

1.1 Expand the State Securities Board from three to five public members.

This recommendation would expand the State Securities Board to avoid problems with the Open Meetings Act, increase the Board's ability to communicate, allow the use of subcommittees, and increase its expertise. Expanding the Board's membership to five members keeps it within the structure of the recent constitutional amendment.

Issue 2

The State Securities Board Lacks Certain Key Enforcement Tools Needed to Protect Texas Investors.

Key Findings

- In a rapidly growing market, the State Securities Board aggressively enforces the Securities Act to protect Texas investors from fraud.
- Texas cannot bring criminal charges against businesses or corporations for securities violations and fraud.
- The Securities Act does not hold investment advisers, unlike securities dealers, civilly liable for fraudulent activity and securities violations.
- The State Securities Board lacks cease and desist authority against unregistered agents of securities dealers and investment advisers, and fraudulent sales practices.
- The State Securities Board's ability to effectively use cease and desist orders to protect investors from fraud is severely limited because orders can take five to nine months to become effective.

State law should allow the Securities Commissioner to immediately stop fraud.

The State Securities Board primarily achieves its mission of protecting investors by enforcing the Securities Act. However, the Board lacks certain key enforcement tools needed to further deter and redress fraud and securities violations. These recommendations would further the protection of investors by providing for the prosecution of criminal enterprises, allowing investors to recover losses due to an investment adviser's illegal activities, and enabling the Commissioner to more quickly stop fraud and securities violations.

Recommendation

Change in Statute

2.1 Establish criminal liability against corporations for violations of the State Securities Act.

This recommendation would extend the Securities Act's criminal penalties to include business entities that engage in fraud or violate registration provisions. Convicted businesses would be subject to sanctions set forth in the Texas Penal Code and the Business

Corporations Act. The statute would ensure that corporate criminal penalties do not apply for unintentional violations of the Act by containing thresholds similar to those in the Penal Codes provisions on corporate criminal penalties.

2.2 Establish civil liability against investment advisers for fraud and registration violations.

This change would extend civil liability provisions for securities dealers in the Securities Act to include investment advisers engaging in fraud or violating registration provisions. A person or a firm would not be liable if either the client knew of the untruth or omission, or the investment adviser did not know of the untruth or omission. A person or a firm who directly or indirectly controls the investment adviser would be liable to the same extent as the investment adviser, unless the controlling person did not know of the facts. The statute would place a three-year limitation on registration violations, and a five-year limitation on fraud.

2.3 Extend the Commissioner's cease and desist authority to include unregistered agents and fraudulent sales practices, and authorize the Commissioner to issue emergency cease and desist orders.

This recommendation would extend the Commissioner's cease and desist authority to include unregistered agents of securities dealers and investment advisers, and the fraudulent sale practices in which a firm or individual has engaged or is about to engage. This change would also authorize the Commissioner to issue emergency cease and desist orders to immediately stop any fraud, fraudulent activity, or violation of the Securities Act. These orders would be limited to situations presenting an immediate threat to the public welfare, including the sale of non-exempt unregistered securities and the unregistered activities of securities dealers, investment advisers, and their agents. Emergency orders would supplement the Commissioner's regular cease and desist authority.

Issue 3

State Law Does Not Specifically Authorize the State Securities Board to Perform Inspections.

Key Findings

- Inspections are a critical and long-standing component of the State Securities Board's regulation of securities dealers and investment advisers.
- The Securities Act gives the agency broad regulatory authority, but does not specifically address inspections or the confidentiality of information obtained through inspections.
- The Board's authority to do inspections, and the confidentiality of records obtained, has been challenged in court.
- Federal and other states' statutes specifically provide for inspection authority and confidentiality of inspected records.

The Securities Act is unspecific with regard to the State Securities Board's inspection authority and does not provide for the confidentiality of inspected records. This lack of specificity has led to an appeal in a state district court challenging the Commissioner's sanction of a company as well as the Board's authority to inspect securities dealers and investment advisers.

Recommendation

Change in Statute _____

Unclear authority for inspections has led to challenges of resulting sanctions.

3.1 Specify that the State Securities Board has the authority to inspect securities dealers and investment advisers.

This recommendation would authorize the Commissioner to conduct, without notice, an inspection of the records of a securities dealer or an investment adviser for the purpose of ensuring compliance with the Securities Act and Board rules.

3.2 Specify that information obtained through inspections is confidential and may not be disclosed to the public.

This recommendation would provide for the confidentiality of information obtained in the inspection of the records of a dealer or investment adviser. The confidentiality would extend to internal notes, memoranda, reports, and communications made in connection with the inspection. However, an order of court would subject all information to public disclosure.

Issue 4

The State Securities Board Cannot Effectively Protect Investors Without Educating Them About Fraud.

Key Findings

- In addition to well-recognized enforcement efforts to correct the occurrence of fraud, the State Securities Board is actively engaged in fraud prevention.
- Increasing numbers of novice investors entering the securities market are at risk from fraudulent schemes.
- The Board cannot effectively protect investors without educating them about fraud.
- The Board's education program is hampered by a lack of statutory authority.
- The lack of access to the Board undermines the agency's outreach efforts towards investors.

Although half of the American population is investing in the securities market, most investors know little about the basics of investing and fraud. As a result, investors are defrauded of millions of dollars each year by unscrupulous securities dealers and investment advisers. Although education is a key to achieving the agency's mission of protecting investors, the State Securities Board is not statutorily directed to educate investors and accept donations for this purpose. Consequently, the Board's education efforts have been significantly limited by a lack of resources, and current efforts are absorbed by staff and funds from other programs.

Education is key to
protecting investors
from fraud.

Recommendation

Change in Statute

4.1 Specify in the Securities Act that investor education is a function of the State Securities Board.

This recommendation would require SSB to educate the public as part of the agency's statutory mission to protect investors. An investor education program should inform the public about the basics of investing and how to detect and avoid securities fraud. All materials would be provided in English and Spanish.

4.2 Grant the Board statutory authority to accept grants and donations for use in educating investors.

This recommendation would clarify SSB's authority to accept grants and donations for use in the agency's education program. This change would extend SSB's appropriation rider authority to include the acceptance of donations for the entire education program — not just the distribution of teaching materials to high school teachers. In accordance with the Government Code, the agency could only accept a donation if the Board approves. The agency could not accept a donation from a party in a contested case until a month after a final decision is made. In addition, SSB could not accept grants or donations from a person who is affiliated with the securities industry.

Management Action _____

4.3 Require the Board to maintain a toll-free number and collaborate with the National Fraud Complaint Management Center to handle investors' questions and complaints.

This recommendation would require SSB to maintain a toll-free telephone number, restricted to Texas, to answer investors' questions and requests for documentation. To advertise its toll-free number, the agency would be required to print its name and number on securities professionals' licenses, and on a written document distributed by securities professionals when contracting with investors. This recommendation would also require the agency to collaborate with the National Fraud Complaint Management Center to receive complaints and inquiries made to the Center and addressed to SSB.

4.4 Require the Board to maintain an e-mail address on its Web site to specifically handle questions and requests for documentation from investors and securities professionals.

This recommendation would require SSB to create a new e-mail address on its Web site that would specifically handle questions and requests for documentation from investors and securities professionals.

Issue 5

Unlike Federal and Other States' Statutes, Texas Law Fails to Distinguish Between Securities Dealers and Investment Advisers.

Key Findings

- Securities dealers and investment advisers are two distinct professions regulated by the State Securities Board.
- The Securities Act's inclusion of investment advisers under the definition of "dealer" is confusing and does not account for the reality of business practices.
- Federal and other states' statutes separate the definitions of securities dealers, investment advisers, and their agents.

The Board regulates most securities dealers, investment advisers, and their agents, that do business in Texas. Although securities dealers and investment advisers are different professions, by including investment advisers under the definition of "dealer" the Securities Act does not appropriately recognize the separate nature of the professions.

Recommendation

Change in Statute

5.1 Define securities dealers, investment advisers, and their agents separately in the Securities Act.

This recommendation would distinguish between securities dealers and investment advisers, and between the agents of securities dealers and investment advisers. The definition of securities dealers would include only individuals and firms involved in the offer or sale of securities. The definition of investment adviser would include individuals or firms engaged in giving investment advice or analysis for compensation. This definition would exclude any person whose performance of such services is solely incidental to the practice of his or her profession. In addition, federal covered investment advisers would be defined separately in the Act. The statute would ensure that a person who is dually registered with SSB as a dealer and an investment adviser or federally covered adviser must only pay one fee. In parallel, a person who is dually registered with SSB as a salesman and an investment adviser representative would only pay one fee.

Dealers and advisors need distinction in the Securities Act.

Issue 6

Texas Has a Continuing Need for the State Securities Board.

Key Findings

- The State Securities Board's mission is to protect Texas investors.
- Texas has a continuing interest in maintaining a safe securities market.
- The State Securities Board has been effective in accomplishing its goal of protecting investors.
- No other federal, state, local, or private entity exists that can perform the functions of the State Securities Board.
- All other states use a statewide agency to enforce securities laws.

The State Securities Board's mission, to protect Texas investors through the enforcement of the Securities Act, is important to Texans. While changes in the Securities Act could improve SSB's operations, the State has benefitted from the agency's enforcement programs and no other federal, state, local, or private agency has the means to provide these functions.

Recommendation

Change in Statute _____

6.1 Continue the State Securities Board for 12 years.

This recommendation continues the State Securities Board for the standard 12-year period until 2013.

Fiscal Implication Summary _____

Two of the recommendations regarding the State Securities Board would have a fiscal impact to the State. These recommendations are discussed below, followed by a five-year summary chart.

- Issue 1 Expanding the State Securities Board to five members would result in additional travel expenses and per diem of two new members costing the State about \$1,800 a year.

Issue 4 An investor education program would cost the State about \$77,500 per year to pay for the program's operating expenses and one full-time employee to manage the program.

Fiscal Year	Cost to the General Revenue Fund	Change in FTEs From FY 2001
2002	\$79,300	+1
2003	\$79,300	+1
2004	\$79,300	+1
2005	\$79,300	+1
2006	\$79,300	+1

State Soil and Water Conservation Board



Agency at a Glance

The Texas State Soil and Water Conservation Board works with agricultural landowners to protect the state's soil and water resources by providing technical and financial assistance through voluntary, non-regulatory programs. The Board's major responsibilities include:

- defining the State's management plan for abating nonpoint source pollution from agricultural and forestry operations,
- providing technical assistance and financial incentives to farmers in establishing water quality management plans, and
- offering technical assistance and financial incentives to ranchers for a brush control pilot project in the North Concho Watershed.

Key Facts

- **Funding.** The Board's budget for fiscal year 2000 was \$18.6 million, with General Revenue contributing 89 percent and federal funds providing 11 percent.
- **Staffing.** The Board currently employs 65 staff, 29 of whom work in agency's Temple headquarters. The remaining 36 employees are field staff serving as liaisons between the Board and local soil and water conservation districts. The Board has five regional offices located in Wharton, Harlingen, Hale Center, Mount Pleasant, and Dublin.
- **Nonpoint Source Pollution.** Through voluntary efforts to control nonpoint source pollution, the Board has worked with landowners to implement 3,582 water quality management plans. Just over half of these plans received financial incentives from the Board.
- **Brush Control.** Despite having authority since 1985, the Board received its first appropriation in the 2000 - 2001 biennium to control water-depleting brush and trees, such as cedar and mesquite. The program received \$9.1 million to establish a pilot project in the North Concho Watershed.

Board Members (5)

Edward Albrecht, Chair (Comfort)

T. Wayne Register, Vice Chair (New Waverly)

J.K. "Rooter" Brite, Jr. (Bowie)

Dayton Elam (Seminole)

Donald Swann (Taft)

State Soil and Water Conservation Board



Agency Head

Bob Buckley, Executive Director, (254) 773-2250

Recommendations

- Strengthen the Board's Water Quality Management Efforts to Control Agricultural Runoff.
- Revise Local District Election Procedures to Encourage Greater Participation.
- Require the Board to Increase Its Outreach to the Agricultural Community Regarding the Nonpoint Source Pollution.
- Continue the State Soil and Water Board for 12 Years.

Issue 1

The Board's Water Quality Management Efforts Do Not Ensure the Greatest Control of Agricultural Runoff.

Key Findings

- The Board uses outdated priorities to guide some of its water quality efforts.
- The Board does not use all available resources for making water quality management plans effective tools in abating agricultural nonpoint source pollution.

The Board risks focusing on the wrong areas of the state for improving water quality because it fails to consider new information on the location of impaired water bodies and to update its priority areas. Consequently, the Board does not always emphasize its nonpoint source pollution control efforts in areas of the state which most need it. The Board's efforts are further impaired by its inability to use all of its funds for financial incentives for landowners. In addition, the agency's interaction with TNRCC on enforcement matters could be improved.

Recommendation

Change in Statute

- 1.1 Require the Board to periodically update its priority areas for addressing agricultural and forestry nonpoint source pollution**
- 1.2 Require the Board to re-examine its financial incentives for establishing water quality management plans to reflect its updated priority areas.**

These recommendations would require the Board to update, every four years, the areas it has prioritized for controlling nonpoint source pollution. In updating its priority areas, the Board would be required to consider existing impaired water bodies identified by the Texas Natural Resource Conservation Commission's (TNRCC) total maximum daily load process or other areas of concern such as groundwater aquifers.

The Board's priority areas should delineate where the Board spends its funding for abating nonpoint source pollution.

The Board would also be required to re-examine its process for providing financial incentives to landowners to establish water quality management plans for controlling nonpoint source pollution. In its funding decisions, the Board would be required to give heavier weight to landowners in the updated priority areas and to record the disbursement of financial incentives. The Board should report this information as part of its annual report.

In addition, the Board's goals should include prioritizing voluntary efforts to reduce nonpoint source pollution and helping landowners avoid regulatory enforcement. The Board's process for working with landowners on a voluntary basis to implement and certify water quality management plans would not change. Under these recommendations, the Board would redirect state funds to implement approaches to address water quality problems in the new priority areas. Landowners with existing water quality management plans in outdated priority areas would continue to receive state funding and technical assistance under the terms of their agreements with the Board. In the future, however, water quality management plans should be in the newly updated priority areas.

1.3 Require the Board to keep detailed records on referrals of farming operations to TNRCC, with information on TNRCC's enforcement measures for each operation.

1.4 Require the Board to report to TNRCC whenever it decertifies a water quality management plan for an animal feeding operation.

These recommendations would improve the flow of information between the Board and TNRCC. The Board would be required to maintain information on all referrals to TNRCC for enforcement, including final disposition by TNRCC, and would provide this information in its annual report.

The requirement to report to TNRCC regarding decertified animal feeding operations expands and clarifies an existing reporting requirement regarding animal feeding operations with certified plans. By reporting this information, the Board would not be recommending enforcement action by TNRCC and would be making no judgment on the compliance status of these operations. Rather, the Board would only be providing TNRCC with information about operations that are no longer working with the Board to implement water quality management plans. Before it could take enforcement action, TNRCC would still have to confirm that a violation of the state's water quality laws occurred and that any pollution that resulted is attributable to the operation in question.

Change in Appropriations

1.5 Suggest that the Board be given unexpended balance authority for its financial incentive funds through the appropriations process.

This recommendation would suggest that the appropriations committees of the House and Senate enable the Board to carry forward funds for financial incentives to farmers and ranchers. Because the Board encumbers funds for approximately three years, it has lapsed funds at the end of the fiscal year when landowners do not spend the money within the three-year time frame. This change would allow the Board to carry unspent money forward from any one fiscal year to the next to continue using it for water quality purposes.

The Board needs some funding flexibility for its financial incentive program.

Management Action

1.6 The Board should require local districts to obligate financial incentive funds early in the fiscal year and follow-up before the end of the fiscal year.

Requiring local districts to obligate financial incentive funds within the first six months of the fiscal year, rather than within the entire fiscal year, would improve the current system in two ways. First, districts that do not obligate their funds quickly would lose their allocation, allowing this money to be redirected by the Board for other water quality management plans that have a demonstrated need. Second, more time would be available for follow-up visits before the end of each fiscal year, allowing local districts to work with landowners to use the funds before the three-year obligation period expires and the money lapses back to the State.

This process would require local districts to work with farmers in finalizing their water quality management plans before the start of the fiscal year. Local districts would submit their plan proposals to the Board for certification and financial incentive funds could be allocated.

1.7 Require the Board to target its status reviews of water quality management plans, rather than distributing them statewide.

This recommendation would focus the Board's attention on water quality management plans in those parts of the state with significant water quality problems related to agriculture or forestry. It would not change the existing requirement that 10 percent of these plans be reviewed each year, but would change the Board's requirement that a minimum number of plans in each local soil and water district be reviewed. The Board would instead be able to decide where these status reviews should occur according to the highest risk to water quality.

Issue 2

Local District Elections Do Not Encourage Sufficient Participation by Eligible Landowners.

Key Findings

- Members of the State Board are currently elected by a vote of the state’s agricultural and forestry landowners.
- Limited opportunities for voting and limited notification may discourage participation in district elections.

The pool of available candidates for State Board elections is limited by poor outreach and tight time-lines for voting in local district elections. The process for electing local district board members limits the pool of candidates for the State Board of Directors and limits voter participation by requiring farmers and ranchers to leave their farms to participate in one-day convention-style elections. This process does not encourage active participation by landowners who have an interest in the Board and how it is run. Opening up the process for electing local district board members would encourage greater participation in these local elections and would potentially increase the pool of candidates to serve on the State Board.

Recommendation

Change in Statute

2.1 Revise local district elections to allow for early voting.

This recommendation would permit eligible landowners more flexibility in nominating and voting for local district directors, as detailed below.

- Require districts in July of each year to set the time, date, and place for an election that is held after September 30 and before October 16.
- Post notice that candidates for district director may file at the local district office during business hours between August 1 and August 30.
- Provide that an election need not be held if only one candidate has filed for office as of September 1. On the established election date, the one candidate will be declared and the prescribed paperwork completed.

Expanding the time-frame for nominating and electing local district board members may improve voter turnout.

- Provide for an election if more than one candidate has filed, by posting the established election date with time and place, as prescribed by law, and by printing candidate names on ballots. Early voting during business hours would be provided as conducted by other political subdivisions. The district conducts the election and is responsible for certifying eligible voters, counting ballots, and certifying the winner. This election process should maintain the existing convention format currently used by local districts.

This recommendation would maintain the existing voter and board member eligibility requirements that a person must be an adult landowner actively engaged in agriculture or forestry.

2.2 Expand the requirement for notice of local soil and water district elections to include both posting in a public place and publishing in a local newspaper.

This recommendation would change the current process for providing public notice of district elections. It would require local districts to post notice in a public place where it is customary to post notices concerning county or municipal affairs, such as a courthouse. In addition, local districts would need to publish a notice in an area newspaper in accordance with the existing notice requirements already in statute.

Management Action _____

2.3 Require the Board to work with local districts to improve their outreach to encourage more participation in local district elections.

This recommendation would provide specific guidance to the Board to work with local districts to improve outreach to landowners through mechanisms such as educational programs and conservation tours. The Board could serve as a clearinghouse of information about practices of some local districts, making this information available to other local districts.

Issue 3

Confusion Exists Regarding Jurisdiction for Nonpoint Source Pollution Abatement.

Although the State Board is statutorily defined as the State's lead agency on abating agricultural and forestry nonpoint source pollution, confusion exists regarding the jurisdiction of the Board's voluntary programs and TNRCC's regulatory programs. This recommendation

Some landowners need education on the merits of the Board's voluntary programs versus TNRCC's regulations.

would require the Board to focus more resources on public education defining the interaction between the Board and the TNRCC in relation to nonpoint source pollution programs, regulations and state law. Providing landowners with this knowledge may increase the level of public participation in the Board's pollution abatement efforts of agricultural nonpoint sources.

Recommendation

Change in Statute

3.1 Require the Board to increase its outreach to the agricultural community to provide education regarding the jurisdiction for nonpoint source pollution between the Soil and Water Conservation Board and the TNRCC.

This recommendation would require the Board to develop and implement a plan for improving current levels of outreach to the agricultural community regarding the Board's and TNRCC's jurisdiction for agricultural and forestry nonpoint source pollution. Included in this outreach effort would be education on the state's water quality laws and the Board's role in assisting farmers in avoiding regulation.

Issue 4

Texas Has a Continuing Need for the Soil and Water Conservation Board.

Key Findings

- Texas has a continuing interest in maintaining the agricultural community's involvement in protecting water quality.
- The Board's approach to dealing with agricultural interests is an appropriate way to address water quality issues with farmers.

The State's need to protect its soil and water resources is important to Texans. In response to changing conditions the Legislature has, over time, given the Soil and Water Conservation Board new functions. With a changing agricultural economy and a federal mandate to protect water quality, a new emphasis has been placed on the Soil and Water Conservation Board's role in environmental protection.

The Board has addressed this environmental protection mission by encouraging farmers to engage in voluntary measures to improve the state's water quality and conservation. By honoring this grassroots tradition and maintaining voluntary involvement from farmers within their own framework, the State is able to achieve a high level of compliance with water quality laws. The Sunset review found that because the Board plays a unique role in providing on-site technical assistance to farmers in managing their environmental resources, transferring the Board's functions to another agency is not a logical step in streamlining state government.

The Board's unique network of farmers and ranchers creates an excellent vehicle for voluntary cooperation with the state's water quality laws.

Recommendation

Change in Statute _____

4.1 Continue the State Soil and Water Conservation Board for 12 years.

This recommendation continues the State Soil and Water Conservation Board for the standard 12-year period until 2013.

Fiscal Implication Summary _____

One recommendation would have a fiscal impact to the State.

Issue 1 If the Board were given unexpended balance authority, the amount of money that would normally lapse back to General Revenue would no longer be subject to appropriation by the Legislature in the following biennium. In the last four years, the lapsed funds have ranged from approximately \$128,000 to \$520,000 per fiscal year.

Texas Water Development Board



Agency at a Glance

The Texas Water Development Board (TWDB), created in 1957, is the State's water planning and financing agency. The agency's two goals – to plan and guide the conservation, development, and management of the state's water resources, and provide financing for the development of water supply and water quality protection – are supported by the following major agency activities:

- planning for the development of the state's water resources;
- administering low-cost financing programs; and
- collecting and disseminating water-related data.

Key Facts

- **Appropriated Funding.** TWDB spent approximately \$44.9 million in fiscal year 2000 for the administration of agency programs. General Revenue comprised \$31.5 million, or 70 percent, of the agency's budget. Other revenue sources include federal funds of \$3.5 million, or 8 percent; appropriated receipts of \$5.9 million, or 13 percent; and other sources, that provide the remaining \$4 million, or 9 percent.
- **Program Revenue.** The agency also receives program revenues that are not appropriated by the Legislature. Program revenues totaled \$267.1 million for fiscal year 2000, with principal and interest on loan repayments comprising \$93.3 million, or 35 percent; federal funds of \$81.6 million, or 31 percent; interest on deposits and investments of \$41.1 million, or 15 percent; and other sources of \$51.1 million, or 19 percent. Program revenues are loaned or granted to political subdivisions to finance water-related infrastructure.
- **Senate Bill 1.** Enacted by the Legislature in 1997, the bill designated TWDB as the lead state agency for coordinating a new regional water planning process, requiring the agency to approve regional plans and incorporate them into the state water plan. The bill also required the agency to expand basic water data collection and dissemination while providing greater financial assistance for disadvantaged communities, privately-owned public water systems, and agricultural programs.
- **Staffing.** In fiscal year 2000, TWDB had 294 employees. Most are located at the agency's headquarters in Austin, with 22 staff located in five regional offices, and a materials lab in Austin.

Texas Water Development Board



- **Oversight.** TWDB is governed by a six-member, part-time Board. The Board is composed of members of the general public that represent different areas of the state.
- **Water Planning Activities.** Activities include data collection, state water plan development, water conservation assistance, and research and local assistance.
- **Financial Assistance Activities.** Activities include the management of the Clean Water and Drinking Water State Revolving Funds, general obligation bond programs, and loan and grant programs for economically distressed communities and agricultural water conservation.
- **Resource Information Activities.** Activities include the Texas Natural Resources Information System, which serves as a clearinghouse and referral service for natural resource and socioeconomic data.
- **Continuation.** The Sunset Commission did not address continuation of the agency because TWDB is subject to review, not abolishment, under the Texas Sunset Act.

Board Members (6)

William B. Madden, Chair (Dallas)

Noe Fernandez, Vice Chair (McAllen)

Jack Hunt (Houston)

Wales H. Madden, Jr. (Amarillo)

William W. Meadows (Fort Worth)

Kathleen Hartnett White (Valentine)

Agency Head

Craig D. Pedersen, Executive Administrator, (512) 463-7847

Recommendations

- Require TWDB to Create a Capital Spending Plan and Explore Ways to Better Address Small Community Water Needs and Emerging Water Issues.
- Require the Governing Boards of TWDB and the Texas Department of Housing and Community Affairs to Meet Annually and Be Advised by a Colonia Advisory Committee.
- Require the Texas Geographic Information Council to Prepare a Biennial State Geographic Information Systems Plan.

Issue 1

Existing Resources for Water-Related Projects May Not Consistently Support or Address State Water Priorities.

Key Findings

- The Board has not established a structure to provide full assurance that financial resources are used to support state water priorities.
- State funding programs for water-related projects do not adequately support the needs of rural or disadvantaged communities.
- The current structure of funding programs prevents the Board from adequately addressing nonpoint source pollution or water conservation needs.

The Texas Water Development Board is the State's water planning agency responsible for the collection and dissemination of information and the financing of water-related infrastructure. As part of accomplishing this role, the agency publishes a state water plan that describes current and future water uses, facility needs and costs, and program and policy recommendations to better manage the state's water resources. However, the state water plan does not indicate how the Board intends to use state funds to meet water priorities. In light of the increasing demand and focus on the state's water resources, preparing and submitting a spending plan on the use of state financial resources for water-related projects will allow greater oversight of the Board's activities, and assure that limited resources are being used in a manner consistent with priorities.

The agency should continue to explore ways to better address small community water needs and emerging water issues, such as nonpoint source pollution. Implementing a pilot program to find new ways to distribute available funding to areas of need or state priority will provide the Board and Legislature with more information on how to best address small community needs and emerging water issues.

Recommendation

Change in Statute

- 1.1 Require TWDB to create a capital spending plan for the use of State-supported funding programs.**

A capital spending plan would show how TWDB plans to allocate its resources to best address state water priorities.

This recommendation would require the agency to specify, through a spending plan, water project priorities to be supported by State-funded programs. The establishment of a plan would provide greater structure and oversight for the use of State-issued debt and provide additional justification for TWDB seeking authority to issue more state debt. The agency should collect and use a variety of indicators when developing a spending plan. The agency would create the plan for the use of funds through the Water Development Fund, Agricultural Water Conservation, and Water Assistance Fund programs.

The agency should submit the plan to the Legislature, as well as the Legislative Budget Board by January 1 of each odd year. The plan would address how TWDB intends to allocate resources to its financial assistance programs in a manner that best addresses state water priorities. This planning process would not restrict TWDB from funding specific projects. However, the agency would be required in a subsequent report to detail why funded projects, not supported by the goals identified in the plan, received state assistance, or how the spending plan has been adjusted in response to changing water priorities.

1.2 Authorize TWDB to develop a pilot program directed toward assisting rural communities.

The agency should pilot a direct loan agreement program to help address rural community needs. The direct loan agreement pilot program would be targeted to small communities with a population of less than 5,000. Any loan agreement should use a state-approved note agreement subject to Attorney General approval and Comptroller certification. Statutory changes to the Local Government Code would be required to implement the pilot.

Funding for the pilot program would come from the Texas Water Resources Finance Authority. Currently, a balance of \$1.37 million exists in the Authority's account. Projects funded by the pilot would be capped at \$250,000 and must serve a public purpose to satisfy federal tax law requirements. The outcome of a pilot will allow the Legislature to better determine how best to address and fund water-related priorities that existing funding programs do not adequately address.

The Board would be required to have rules establishing the requirements for the pilot program in place by March 1, 2002 and to award funds by September 1, 2002. The agency would be required to report to the Legislature by January 1, 2005 on the results of the pilot program.

1.3 Authorize TWDB to use the Clean Water State Revolving Fund to finance nonpoint source pollution abatement projects.

This recommendation would expand TWDB's authority to use existing funding sources to meet the costs associated with nonpoint source pollution abatement projects. The Board would be authorized to use available funds from the Clean Water State Revolving Fund for both public and private entities. However, assistance provided to a private entity must come from funds that are not supported by state general obligation debt. The Board would establish necessary criteria for eligible projects and the terms for assistance.

1.4 Require the Board and the State Soil and Water Conservation Board to jointly report to the Legislature on improving water conservation efforts.

This recommendation would require the agency to study and report, in conjunction with the State Soil and Water Conservation Board, to the Legislature on ways to improve or expand water conservation efforts. The report should include an assessment of both agricultural and municipal water conservation issues. The report should summarize existing conservation efforts by TWDB and the Conservation Board, specify future conservation needs, and identify funding or programmatic approaches for supporting additional conservation efforts. The report should include an assessment of existing statutory authority and whether changes are needed to more effectively promote and fund conservation projects. The report could be issued as a part of, or as a supplement to, the State Water Plan.

Issue 2

Despite Significant Efforts to Provide Water and Wastewater Services to Economically Distressed Areas, Many Colonia Residents are Still Not Served.

Key Findings

- Despite significant expenditures on water and wastewater infrastructure, many colonia residents are still not served due to project delays.
- Information regarding colonias is developed in a piecemeal fashion, keeping these areas from receiving the sustained, focused attention they need.
- The State has begun to explore new approaches to addressing colonia issues.

TWDB and the Texas Department of Housing and Community Affairs (TDHCA) provide financial assistance to eligible applicants for water

and wastewater infrastructure serving colonias. Some projects funded by TWDB's Economically Distressed Areas Program (EDAP) have experienced long delays, preventing residents from receiving needed water and wastewater services. While much has been done to improve the quality and flow of information regarding colonias, policymakers may still not be receiving the information they need.

By requiring joint meetings of the governing boards of TWDB and TDHCA, and directing an advisory committee to report to them during these meetings, the agencies would receive feedback on the effectiveness of their policies and benefit from expertise on colonia issues from outside the agencies.

Recommendation

Change in Statute

- 2.1 Require an annual joint meeting of the governing boards of TWDB and TDHCA.**
- 2.2 Expand the membership and focus of the proposed Colonia Advisory Committee to advise the governing boards of both TDHCA and TWDB on the needs of colonia residents and the effectiveness of agency policies.**

These recommendations would require the governing boards of TWDB and TDHCA to meet once a year to address their progress in meeting the needs of colonia residents and hear from the Colonia Advisory Committee, as proposed in a recommendation of the Sunset Commission on TDHCA. The Committee consists of one colonia resident, one representative of a nonprofit organization that serves colonia residents, one local government representative, one person to represent private interests in banking or land development, one representative of a nonprofit utility, one representative of an engineering consulting firm involved in EDAP projects, and one public member. In addition, a representative of the Office of the Secretary of State would serve as an ex officio member. All members should be appointed by the Governor and, with the exception of the public member, must reside within 100 miles of the Texas-Mexico border.

This recommendation would require the Committee to review the progress of water and wastewater infrastructure projects affecting colonia communities and make recommendations to the boards concerning:

- the success of efforts to ensure colonia residents are connected to the infrastructure funded by state agencies;

The Colonia Advisory Committee would review the progress of water and wastewater projects and make recommendations to the boards.

- the financial, managerial, and technical capabilities of project owners and operators;
- the agencies' management of its colonias programs and policies regarding underperforming projects; and
- any other issues related to the impact of State-managed infrastructure programs on colonia residents.

Management Action

2.3 TWDB should establish procedures to identify and manage EDAP projects that are not meeting performance goals, including recommending training for EDAP participants.

TWDB should follow documented procedures to identify and manage underperforming projects before withholding or threatening to withhold funds. The procedures should include criteria to identify when TWDB should recommend state-sanctioned training on EDAP project management for the owners and operators of underperforming projects.

2.4 TWDB and TDHCA should improve the coordination of reporting information on the status of colonia water and wastewater projects.

TWDB should, on a quarterly basis, identify priority projects that are ready for TDHCA funding for connections to individual households. TDHCA should report the number of persons who have been connected to EDAP-funded systems through its projects, as part of its quarterly report currently submitted to TWDB. In addition, TWDB and TDHCA should develop a common standard to measure the number of connections made and persons that are served by their projects.

2.5 TWDB's Board should allow for an open agenda item during its regularly scheduled public meetings.

While TWDB's Board already allows the public to comment on agenda items at its monthly meetings, it should also allow the public an opportunity to comment on any issue under its jurisdiction.

Issue 3

Full Coordination of the State's Geographic Information Systems Is Hampered by a Lack of High-Level Planning and Access to a Common Network.

Key Findings

- State policymakers do not have adequate access to information on the State's investment in geographic information and plans for the future.
- The full benefit of the Texas Natural Resources Information System (TNRIS) to the State cannot be achieved without access to a common network.
- Other state coordinating efforts have greater status than the Texas Geographic Information Council (TGIC).
- With additional authority, TNRIS could access private funds to pay the costs of improved Internet access.

The State has benefitted greatly from investments in geographic information systems (GIS) technology. While a number of state agencies have created these systems, TNRIS serves as the central clearinghouse of GIS information for the state and is administered by TWDB. To assist TNRIS in its coordination efforts, the Legislature created TGIC, an interagency advisory council. Although TGIC has been successful in coordinating the State's GIS efforts, it is limited by a lack of adequate information regarding state agency investments in GIS, and access to a common network.

The Sunset review of TNRIS examined how it serves other state agencies and how the function could be improved. The review concluded that elevating the status of TGIC, and authorizing the Board to establish private partnerships with TNRIS to better fund Internet access, could help the State maximize its investment in GIS.

Recommendation

Change in Statute

- 3.1 Require TGIC to collect information on the past investments, current expenditures, and future plans for geographic information systems of state agencies.**
- 3.2 Require TGIC to prepare a biennial State GIS plan based upon information collected from state agencies; and to submit the plan to the Texas Water Development Board, Department of Information Resources, the Legislature, and the Governor.**

These recommendations would give TGIC the authority to collect information about the State's investments in geographic information and plans for its use from TGIC members representing state agencies. TGIC should also request voluntary reporting of information from non-state agency members. TGIC would then be able to write a high-level plan for use by the State's policymakers. This plan would allow TGIC to highlight its achievements and discuss its visions for GIS over the next biennium, including what initiatives should be taken to improve the State's GIS programs. TGIC should set the requirements for the high-level, summary information on GIS projects to be collected for the plan. TGIC members can use existing information, such as the listing required in the Biennial Operating Plan prepared for the Legislative Budget Board or any other resources, to collect the list of GIS projects. The first new State GIS plan should be submitted by September 1, 2002.

The State GIS plan
would allow TGIC to
highlight its
achievements and
discuss its visions for
GIS over the next
biennium.

3.3 Authorize TWDB to establish private partnerships on behalf of TNRIS.

This recommendation would give TWDB the authority to partner with private firms to provide additional funding for improved access to TNRIS information. One form of partnership could be to allow private, value-added firms to establish a link on the TNRIS Web site, and for TWDB to charge a fee for the providing the link. Because the types of partnerships could change over time, the statute should not limit the types of agreements that could be made except to ensure compliance with other related laws, such as ethics, purchasing, and contract laws. The Board should adopt rules to describe the process for which the agency could partner with private companies. These rules should also define the types of partnerships that would be allowed, establish an appropriate fee collection process, and define the nondiscriminatory methods to be used to determine which companies could contract with TWDB.

Fiscal Implication Summary

This report contains recommendations that would have a fiscal impact to the State. While revenue gains and costs could not be estimated for this report, the fiscal impact of each recommendation is summarized below.

- Issue 1 The creation of a pilot program to direct funding to rural communities would rely on existing resources of the Texas Water Resources Finance Authority, estimated at \$1.37 million. This recommendation simply directs TWDB to use the Authority's existing funds for the specific purpose of the pilot program.

Issue 3 Authorizing TWDB to partner with private companies would enable the agency to raise additional funds to pay for increased Internet access to TNRIS information. This better access would help state agencies avoid the cost of duplicating and maintaining information that is already housed at TNRIS. These additional revenues and cost savings could not be estimated for this report.

ACROSS-THE-BOARD RECOMMENDATIONS

Across-the-Board Recommendations

This section of the report briefly describes each of the Sunset across-the-board recommendations, with a chart detailing the application the ATBs to each of the agencies currently under review for the 76th Legislature.

Across-the-board recommendations (ATBs) are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards for state agencies. These policies are an outgrowth of the Sunset review criteria as set out in the Sunset Act and have resulted from recurring problem areas identified through almost 300 Sunset reviews. The ATBs are designed to ensure open, responsive, and effective government.

The across-the-board recommendations are applied to every state agency reviewed by the Sunset Commission, unless a clear reason to exempt the agency is identified. Some Sunset ATBs address policy issues related to an agency’s policymaking body, such as requiring public membership on boards or allowing the Governor to designate the chair of a board. Other Sunset ATBs require agencies to set consistent policies in areas such as how to handle complaints and how to ensure public input. Another set of ATBs deals exclusively with licensing standards and are applied only to agencies with regulatory functions.

General Across-the-Board Recommendations

- 1. Public Membership** — Require at least one-third public membership on state agency policymaking bodies.

The purpose of government is to protect the health, welfare and safety of the public. However, some agencies do not have public members on their boards. Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This potential problem can be addressed by giving the general public a direct voice in the activities of the agency through representation on the Board. The requirement that at least one-third of the members be representatives of the general public ensures appropriate representation.

- 2. Conflicts of Interest** — Require specific provisions relating to conflicts of interest.

An agency may develop close ties with professional trade organizations and other groups that may not be in the public interest. Conflicts of interest can also result when board or commission members or an agency’s general counsel are involved in lobbying. This guideline reduces the possibility of such a conflict. These provisions are necessary to prevent these kinds of relationships from developing.

- 3. Nondiscriminatory Appointments** — Require that appointment to the policymaking body be made without regard to the appointee’s race, color, disability, sex, religion, age, or national origin.

State agencies must be fair and impartial in their operations. The achievement of this goal is aided by the existence of policymaking bodies whose appointees have been chosen on an impartial and unbiased basis.

- 4. Governor Designates Presiding Officer** — Provide for the governor to designate the presiding officer of a state agency’s policymaking body.

Presiding officers of state commissions and boards in Texas have traditionally been elected by their fellow members. In an effort to increase state agencies’ accountability, the legislature has routinely authorized the Governor to appoint the presiding officer of state policymaking bodies.

- 5. Grounds for Removal** — Specify grounds for removal of a member of the policymaking body.

Several of the preceding across-the-board provisions set out appointment requirements for board or commission members (e.g., conflict-of-interest requirements). This provision directly specifies that grounds for removal of a board or commission member exist if these requirements are not met. In addition, the provision clarifies that if grounds for removal exist, actions taken by the board or commission during the existence of these grounds are still valid.

- 6. Standards of Conduct** — Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.

This recommendation ensures that an agency’s policymaking body and employees are informed of provisions in state law concerning standards of conduct for state officers and employees.

- 7. Board Member Training** — Require training for members of policymaking bodies.

Members of state boards and commissions should be provided with adequate information and training to allow them to properly and effectively discharge their duties. This provision ensures that appropriate training is provided before an appointee actively begins serving on a board or commission.

- 8. Separation of Functions** — Require the agency’s policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.

This recommendation establishes the executive director/administrator as the individual in charge of managing the agency’s day-to-day activities. It removes the possibility of the policymaking body administering the agency in addition to setting agency policy.

- 9. Public Input** — Provide for public testimony at meetings of the policymaking body.

This requirement ensures the opportunity for public input to the policymaking body on issues under its jurisdiction.

- 10. Complaint Information** — Require information to be maintained on complaints.

The sunset review process has shown that complete and adequate information about complaints is maintained by some agencies. This recommendation ensures that, at a minimum, files are developed and maintained on all complaints. This provision would also ensure that all parties to a complaint are made aware of the status of the complaint and agency policies and procedures pertaining to complaint investigation and resolution.

- 11. Equal Employment** — Require development of an equal employment opportunity policy.

This recommendation ensures that each agency develops a written, comprehensive equal employment opportunity plan that is filed with the Governor’s Office and updated annually. Agency efforts in this area are further enhanced by requiring the agency to file annual progress reports with the Governor’s Office.

12. State Employee Incentive Program — Require training on participation in the State Employee Incentive Program.

This recommendation ensures that an agency's employees are educated on the State's program to reward innovative and cost-saving measures, which can improve the agency's operations and reward the employee(s) involved.

Licensing Across-the-Board Recommendations ---

1. Renewal Time Frames — Require standard time frames for licensees who are delinquent in renewal of licenses.

Variations occur among licensing agencies in requirements concerning the number of days a license renewal may be delinquent before penalties are brought into effect. This provision is aimed at ensuring comparable treatment for all licensees, regardless of their regulated profession. This provision also clarifies that a person whose license has expired may not engage in activities that require a license until the license has been renewed.

2. Notification of Exam Results — Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.

This provision ensures the timely reporting of examination results. The timely notification is important to those persons whose future plans are contingent on their examination scores. This provision also ensures that examinees are informed of the reasons for failing the examination. Such knowledge serves to protect the examinee from arbitrary restrictions, as well as assisting the examinee to acquire the skills and knowledge to pass the exam and provide the public with quality services.

3. Endorsement and Reciprocity — Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.

Agencies should be allowed to establish a procedure to license out-of-state applicants without examination if the applicant is currently licensed by another state. This policy protects the public interest, imposes uniform requirements on all applicants, and spares the already-licensed practitioner the cost and time required in "retaking" an examination previously passed in another state.

Two approaches to licensing out-of-state applicants are endorsement and reciprocity. Licensure by endorsement requires the licensing agency to review each applicant's credentials before issuing a license to determine if the applicant was required to meet substantially equivalent requirements in another state. Licensure by reciprocity allows the licensing agency to enter into a reciprocal agreement with another state under which each state will accept the other state's licensees. These licensing approaches are not mutually exclusive and, if appropriate, agencies could be authorized to use both approaches.

4. Provisional Licenses — Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.

Provisional licenses allow license applicants who hold a license in another state to practice in Texas while their credentials are being evaluated. Provisional licenses can be issued only if the individuals meet certain requirements such as passing a recognized examination and being sponsored by a Texas licensee.

5. Staggered Renewal of Licenses — Authorize the staggered renewal of licenses.

This type of provision encourages the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. The staggering procedure improves the efficient utilization of agency personnel by establishing a uniform workload throughout the year and eliminating backlogs in licensing efforts and the need for seasonal employees.

6. Full Range of Penalties — Authorize agencies to use a full range of penalties.

As a general principle, an agency's range of penalties should conform to the seriousness of the offenses presented to the agency. However, in many cases licensing agencies are not given a sufficient range of penalties. This provision is intended to ensure that the appropriate sanctions for offenses are available to the agency. The general range of sanctions are: revocation of a license, suspension of a license, refusal to renew a license, probation of a person whose license has been suspended, or reprimand of a licensee.

7. Advertising and Competition — Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.

The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such a restriction limits public access to information regarding professional services and hampers the consumer's efforts to shop for "a best buy." Elimination of these rules or statutes restores a degree of free competition to the regulated area to the benefit of the consumer.

8. Continuing Education — Require the policymaking body to adopt a system of continuing education.

Proper protection of the public is dependent on practitioners having a working knowledge of recent developments and techniques used in their trades. The continuing education requirement provides one proven means of ensuring such upgrading.

Application of ATBs to Agencies Currently under Review _____

For the 25 agencies currently under Sunset review for the 76th legislative session, each of the ATBs was evaluated and applied where appropriate. If the standard approach did not fit, the language was modified to fit the precise circumstances of an individual agency's operations. In addition, some of the agencies under review this session had been previously reviewed and the ATB language was already in law or simply had to be updated. The following chart details the application of ATBs to agencies currently under review.

Sunset Across-the-Board Recommendations — 2001										
	Aircraft Pooling Board, State	Banking, Department of	Coastal Coordination Council	Consumer Credit Commissioner, Office of	Economic Development, Department of	Finance Commission of Texas	Fire Fighters' Pension Commissioner, Office of	Funeral Service Commission, Texas	General Services Commission, Texas	Texas State Cemetery
General										
1. Public Membership	s	â	n/a	â	s	u	u	s	s	s
2. Conflicts of Interest	s	u	a	u	s	u	m	u	u	s
3. Nondiscriminatory Appointments	s	â	a	â	s	s	u	s	s	s
4. Governor Designates Presiding Officer	n	â	n/a	â	s	s	n/a	s	s	s
5. Grounds for Removal	s	â	a	â	u	u	n/a	s	u	a
6. Standards of Conduct	s	a	a/m	u	s	a	s	s	s	a
7. Board Member Training	s	â	a/m	â	a	a	n/a	a	a	a
8. Separation of Functions	s	a	n/a	â	a	a	n/a	u	s	a
9. Public Input	s	â	a	â	s	a	n/a	s	s	a
10. Complaint Information	a	a	a	u	u	a	a	u	u	ã
11. Equal Employment	s	a	n/a	u	s	u	u	u	s	ã
12. Employee Incentive Program	a	a	a	a	a	a	a	a	a	ã
Licensing										
1. Time Frames	n/a	n/a	n/a	n/a	n/a	n/a	n/a	u	n/a	n/a
2. Notification of Exam Results	n/a	n/a	n/a	n/a	n/a	n/a	n/a	u	n/a	n/a
3. Endorsement and Reciprocity	n/a	n/a	n/a	n/a	n/a	n/a	n/a	u	n/a	n/a
4. Provisional Licenses	n/a	n/a	n/a	n/a	n/a	n/a	n/a	a	n/a	n/a
5. Staggered Renewal of Licenses	n/a	n/a	n/a	a	n/a	n/a	n/a	u	n/a	n/a
6. Full Range of Penalties	n/a	Đ	n/a	s	n/a	n/a	n/a	s	n/a	n/a
7. Advertising and Competition	n/a	n/a	n/a	m	n/a	n/a	n/a	s	n/a	n/a
8. Continuing Education	n/a	n/a	n/a	n/a	n/a	n/a	n/a	s	n/a	n/a
a=apply; u=update; m=modify; s=already in statute; n=do not apply; n/a=not applicable â Located in the Finance Commission of Texas Statute. ã Located in the General Services Commission Statute. Đ Licensing ATB 6 was applied to the Department of Banking's Prepaid Funeral Contract Program and Perpetual Care Cemetery Provisions.										

Sunset Across-the-Board Recommendations — 2001											
	Housing and Community Affairs, Texas Department of	Judicial Conduct, State Commission on	Natural Resource Conservation Commission, Texas	Parks and Wildlife Department, Texas	Pension Review Board, State	Railroad Commission of Texas	Savings and Loan Department	Securities Board, State	Soil and Water Conservation Board, State	Water Development Board, Texas	
General											
1. Public Membership	u	m	u	u	n/a	n/a	â	s	n/a	s	
2. Conflicts of Interest	u	a	u	u	s	u	u	a	u	u	
3. Nondiscriminatory Appointments	u	a	u	u	u	n/a	â	u	a	u	
4. Governor Designates Presiding Officer	u	n	u	a	a	n/a	â	u	n/a	s	
5. Grounds for Removal	u	a	u	u	u	n/a	â	u	u	u	
6. Standards of Conduct	u	a	s	u	u	u	a	a	u	u	
7. Board Member Training	a	m	a	a	a	n/a	â	a	u	a	
8. Separation of Functions	u	a	s	u	u	a	â	a	s	a	
9. Public Input	s	n	s	s	s	a	â	u	s	s	
10. Complaint Information	u	a	u	a	a	u	a	m	u	u	
11. Equal Employment	s	a	u	u	u	a	a	a	u	u	
12. Employee Incentive Program	a	a	a	a	a	a	a	a	a	a	
Licensing											
1. Time Frames	u	n/a	s	n/a	n/a	a	a	s	n/a	n/a	
2. Notification of Exam Results	u	n/a	s	n/a	n/a	a	n/a	u	n/a	n/a	
3. Endorsement and Reciprocity	a	n/a	a	n/a	n/a	a	a	n	n/a	n/a	
4. Provisional Licenses	a	n/a	n/a	n/a	n/a	a	a	n	n/a	n/a	
5. Staggered Renewal of Licenses	u	n/a	u	n/a	n/a	s	s	s	n/a	n/a	
6. Full Range of Penalties	u	n/a	s	n/a	n/a	a	s	s	n/a	n/a	
7. Advertising and Competition	s	n/a	a	n/a	n/a	a	s	s	n/a	n/a	
8. Continuing Education	a	n/a	s	n/a	n/a	a	s	m	n/a	n/a	
a=apply; u=update; m=modify; s=already in statute; n=do not apply; n/a=not applicable â Located in the Finance Commission of Texas Statute.											

**IMPLEMENTATION OF THE 1999
SUNSET LEGISLATION**

Summary

The Sunset Act requires the Sunset Commission to review the implementation of Sunset bills provisions from the preceding legislative session. This report section looks at the progress agencies have made in implementing changes required by the 1999 Sunset bills.

In January 1999 the Sunset Commission presented the results of its review of 25 state agencies to the 76th Legislature. The Commission recommended abolishing one agency, the Hospital Equipment Financing Council, consolidating the Texas Department on Aging with the Department of Human Services (DHS), and continuing the other 22 agencies. The Legislature enacted bills containing these recommendations during the 1999 legislative session. However, the Legislature required two of these agencies, the Children's Trust Fund and the Texas Office for the Prevention of Disabilities to undergo a special Sunset review before the 2001 Session. The Legislature also continued DHS for four years, until 2003, without adopting the Sunset recommendations related to that agency. In addition, the Legislature continued the Child Support Division at the Attorney General's Office for a two-year probationary period and required the Sunset Commission to conduct a separate compliance review of the Division and report its findings to the 77th Legislature. As a result, none of these agencies are included in this implementation analysis.

The 1999 Sunset bills required 528 separate changes by the agencies continued through the Sunset process. These changes were designed to improve the efficiency and effectiveness of their operations. During the review each agency affected by Sunset legislation submitted a report detailing its efforts to implement each of the required changes. In addition, staff received input from other affected entities to verify each agency's efforts to implement the required changes. Sunset staff also followed up with the agencies on any incomplete or questionable items. These efforts resulted in the following status report on agency's implementation of the Sunset legislation from the 76th session.

Agency Implementation of the 1999 Sunset Legislation

Agency	Changes Required	Completed	In Progress	Not Implemented
Agencies in Full Compliance				
Texas Commission for the Blind (H.B. 1400)	9	9		
Texas Cancer Council (H.B. 1033)	12	12		
Correctional Managed Health Care Advisory Committee (S.B. 371)	17	17		
Interagency Council on Early Childhood Intervention (H.B. 1503)	12	12		
Governor's Committee on People with Disabilities (H.B. 1611)	15	15		
Texas Incentive and Productivity Commission (S.B. 355)	11	11		
Texas Department of Mental Health and Mental Retardation (S.B. 358)	25	25		
Board of Pardons and Paroles (S.B. 352)	2	2		
Texas Board of Private Investigators and Private Security Agencies (H.B. 2617) (see page 21 for staff comments)	66	66		
Center for Rural Health Initiatives (S.B. 354)	15	15		
Agencies Not in Full Compliance				
Texas Commission for the Deaf and Hard of Hearing (H.B. 1401)	7	6	1	
Texas Planning Council for Developmental Disabilities (H.B. 1610)	12	11	1	
Advisory Commission on State Emergency Communications (H.B. 1983)	26	25	1	
Texas Department of Health (H.B. 2085)	86	78	7	1
Health and Human Services Commission (H.B. 2641)	57	48	8	1
Texas Commission on Human Rights (H.B. 1976)	19	15	4	
Texas Department of Public Safety (S.B. 370)	32	30	2	
Texas Department of Aging/Long Term Care Services (S.B. 374)	24	21	3	
Texas Rehabilitation Commission (H.B. 1402)	23	21	2	
Texas Department of Criminal Justice (S.B. 365)	58	55	3	

Overall, agencies have implemented more than 93 percent of the changes included in the 1999 Sunset legislation. Key changes include the following:

- Establishing the Health and Human Services Commission as the lead agency in managing the operational activities of all health and humans services agencies.
- Transferring the Texas Department on Aging to the Department of Human Services (DHS) on September 1, 2003, creating the Department on Aging and Disability Services.
- Requiring the Texas Rehabilitation Commission, Texas Commission for the Deaf and Hard of Hearing, and the Interagency Council on Early Childhood Intervention to ensure the best value for the State by improving provider selection and contracting.
- Requiring the Texas Department of Mental Health and Mental Retardation to plan for and report on the future use of State Schools and State Hospitals.
- Establishing a process for civil commitment of persons judged to be sexually violent predators after they have been released from a correctional facility or have been discharged from a mental health facility.
- Strengthening the internal oversight of the Department of Public Safety, to reduce the need for exceptional legislative review, by creating an office of Audit and Review composed of the internal audit and inspection and planning functions.

Only four changes are identified as not implemented. The current status of these recommended changes, and those that are partially implemented, are detailed in the following materials. In addition to statutory changes, the Sunset Commission adopted a number of management recommendations for improvements to agency operations. The State Auditor is responsible for evaluating an agency's implementation of management recommendations adopted by the Sunset Commission. The Auditor's findings are contained in SAO No. 01-006, *A Review of Sunset Advisory Commission Management Actions Recommendations*. This report is available on the State Auditors Web page – www.sao.state.tx.us, or by contacting the State Auditor's Office.

Texas Commission for the Deaf and Hard of Hearing
H.B. 1401

H.B. 1401, as adopted by the 76th Legislature, continued the Texas Commission for the Deaf and Hard of Hearing. The legislation included a total of seven changes requiring action. The following chart summarizes the status of one provision that is being actively pursued but will not be fully implemented in the near future.

Bill Provision	Implementation Status
<p>Requires the Commission to develop guidelines for trilingual interpretation and provide training programs for trilingual interpreters.</p>	<p>The Commission has established a Trilingual Task Force that meets twice yearly and has started to outline the requirements for three categories relating to trilingual interpretation including training, testing, and administrative needs. The Commission does not have time frames for complete implementation of the bill provision.</p>

**Texas Planning Council for Developmental Disabilities
H.B. 1610**

H.B. 1610, as adopted by the 76th Legislature, continued the Texas Council for Developmental Disabilities (the Council). The legislation included a total of 12 changes requiring action by the agency. The following chart summarizes one provision that has been partially implemented and provides its status.

Bill Provision	Implementation Status
<p>Deletes the requirement for a management agreement between the Council and its designated state agency, the Texas Rehabilitation Commission (TRC), and requires the designated state agency to enter into a memorandum of understanding with the Council that delineates the roles and responsibilities of the designated state agency.</p>	<p>The Council initiated discussions in September 1999 concerning a memorandum of understanding with TRC. The Council and TRC are reviewing a draft of the memorandum and nearing agreement. The agency did not indicate when the memorandum would be finalized. The management agreement executed by the Council and TRC terminates when the memorandum is executed.</p>

**Advisory Commission on State Emergency Communications
H.B. 1983**

H.B. 1983, as adopted by the 76th Legislature, continued the Advisory Commission on State Emergency Communications. The legislation included a total of 26 changes requiring action. The following chart summarizes the status of one provision that has not been fully implemented and shows its status.

Bill Provision	Implementation Status
<p>Instructional provision directing the Commission to implement Phase I of the wireless enhancements set forth by the Federal Communications Commission (FCC). The Commission must implement these enhancements for at least 75 percent of the population served by the State's 911 system by September 1, 2000.</p>	<p>The agency estimates that wireless enhancement deployment reached 73.7 percent of the population served by the State's 911 system by September 1, 2000. However, an audit by the State Auditor's Office could only validate implementation of the improvements to 11.3 percent of the population. The agency points out that successful deployment depends on the involvement of other parties including wireless telephone companies, local telephone companies, regional planning commissions, the FCC, and the Public Utility Commission. The agency has pledged to work with each of the other parties to fully implement the provision.</p>

Texas Department of Health
H.B. 2085

H.B. 2085, as adopted by the 76th Legislature, continued the Texas Department of Health. The legislation included a total of 86 changes requiring action. The following chart summarizes the eight provisions that have not been fully implemented and provides the status of each.

Bill Provision	Implementation Status
<p>Requires the Department to develop and implement a blueprint that specifies the methods the Department will use to integrate and coordinate all agency operations to the maximum extent possible. Requires the Department to identify and address within the blueprint areas of overlap between programs to streamline agency operations. Requires the blueprint to be submitted by September 1 of each even-numbered year to the Governor, Lieutenant Governor, the Speaker of the House, the Legislative Budget Board and the legislative committees with oversight responsibilities for the Department.</p>	<p>The TDH Comprehensive Strategic and Operational Plan: A Blueprint for Public Health Improvement was completed in September 2000. With some implementation activities already underway, the Blueprint Implementation Steering Committee projects completion of plans for seven identified target areas by early 2001.</p>
<p>Requires the Department to maintain information on written complaints filed with the Department.</p>	<p>TDH intends to develop a centralized complaint intake system and also intends to initiate an ombudsman position to handle complaints consistently.</p>
<p>Requires the Department to obtain external financial and performance audits of Medicaid contractors, with risk as a factor in determining frequency and extent of audits.</p>	<p>External financial audits of Maximus, Birch and Davis, and Texas Health Quality Alliance have been completed, and performance audits are planned for 2001. An external financial and performance audit for National Heritage Insurance Company, the largest Medicaid contractor, will begin in January 2001.</p>
<p>Requires a fiscal intermediary who makes payments to service providers on behalf of the Department to use electronic funds transfer when making such payments.</p>	<p>Approximately 15,000 of the 47,000 providers who submit Medicaid claims to the Department receive their payments electronically. The Department is making outreach efforts, including working with the Texas Medical Association and the Texas Hospital Association, to enlist providers in electronic billing systems.</p>

Bill Provision	Implementation Status
Designates the Department as the only state agency with authority to regulate narcotic treatment programs within the state. Also, removes the authority of the Texas Commission on Alcohol and Drug Abuse in this area.	Final rules are expected in January 2001.
Provides the Board of Licensure for Professional Medical Physicists with the authority to levy administrative penalties against licensees who violate the law or applicable rules.	Proposed rules will be published in January 2001.
Allows the Board of Licensure for Professional Medical Physicists to issue provisional licenses to applicants licensed in another state. Requires the Board to issue a license to a provisional license holder if certain conditions are met. Establishes time frames for approval or denial of a provisional license holder's application. Allows the Board to set reasonable fees.	Proposed rules will be published in January 2001.
Requires physicians offices which perform more than 300 abortions in a 12 month period to be licensed as abortion facilities by January 1, 2000.	A federal district court issued a preliminary injunction on December 29, 1999, enjoining the Department from enforcing this law.

**Health and Human Services Commission
H.B. 2641**

H.B. 2641, as adopted by the 76th Legislature, continued the Health and Human Services Commission (HHSC). The legislation included a total of 57 provisions requiring action. The following chart summarizes nine provisions that have not been fully implemented and provides the status of each.

Bill Provision	Implementation Status
Requires the HHSC Commissioner to hire a medical director to provide medical expertise.	This provision has not been implemented. HHSC reports that no FTE is available for this position. HHSC has submitted a request for an FTE and is waiting LBB's approval.
Requires the Commission to develop and implement an annual services plan for each HHS region with performance objectives for the HHS agencies.	The Commission is in the process of identifying current regional planning processes that may be used to develop annual service plans to improve regional business services. The Commission anticipates that a regional planning process will be available by the end of fiscal year 2001.
Requires the Commission to appoint a local governmental advisory committee to identify local program needs and service priorities to assist the Commission in its expanded duties.	House Bill 822 required HHSC to create a task force of state agencies and county representatives to study federal reimbursements to counties. The work of this task force will serve as a starting point for the required advisory committee. The advisory committee members have been identified, but the committee has not yet been convened as of October 2000.
Requires the Commission to appoint an information resources advisory committee, comprised of state information resources managers and HHS agency heads.	The Commission meets monthly with an advisory committee composed of agency information resources managers, but agency heads have not yet been included.
Requires the Commission to publish a contract management handbook with consistent policies and practices for HHS agencies, including standard provisions.	HHSC has partially implemented this provision. A draft contract procurement handbook will be completed by March 1, 2001 for review and comments by HHS agencies.
Requires the Commission, with the Comptroller, to establish a central contract management database that identifies each HHS agency contract.	The Commission is working with the HHS PeopleSoft workgroup to establish a centralized contract management database.

Bill Provision	Implementation Status
<p>Requires HHSC, the Records Management Interagency Coordinating Council (RMIC), and the General Services Commission to make consistent information available for telephone directories to be distributed after December 1, 2000. Requires each of these entities to report to leadership with respect to the implementation by December 31, 2000.</p>	<p>The Commission has worked with the required entities to develop and document a common health and human services taxonomy. However, the terminology is technical, and analysts estimate that the total annual cost for listing and creating/updating the entries in all residential telephone directories would be between \$3.9 and \$11.1 million.</p> <p>Since passage of this bill provision, the Federal Communications Commission and the Texas Public Utility Commission have assigned a “211” designation for one-call health and human services information. Texas Information Referral Network has established Area Information Centers throughout the state to respond to “211” calls. The health and human service taxonomy will be used by the professionals answering the “211” calls. Analysts believe that the publication of the “211” number in all telephone directories would be an acceptable alternative and would meet the intent of the legislation to use a single method of categorizing health and human service information.</p>
<p>Requires the creation of an advisory committee on coordinated transportation.</p>	<p>The Commission is in the preliminary stages of appointing members, who have been identified, to the coordinated transportation advisory committee.</p>
<p>Requires HHSC to consider costs and types of health care services, number of plans and recipients, an adequacy of premiums and fees in determining premium payment rates paid to managed care organizations. Requires HHSC to consider and adjust for the regional variation in costs of services for the Medicaid program. Requires the premium payment rate be established by a competitive bid process.</p>	<p>The Commission and TDH are working with Mercer, a nationally recognized actuarial firm to examine the capitation payment methodology.</p>

**Texas Commission on Human Rights
H.B. 1976**

H.B. 1976, as adopted by the 76th Legislature, continued the Texas Commission on Human Rights. The legislation included a total of 19 changes requiring action. The following chart summarizes four provisions that have not been fully implemented and provides the status of each.

Bill Provision	Implementation Status
Requires the Commission to provide reasonable access to public outreach information by providing direct telephone operator assistance; making information available in alternative formats, including large print, disc, braille, and audiocassette; and making the Internet Web site accessible to persons with disabilities.	The Commission has upgraded its telephone system capabilities. The Commission's PBX system is direct operator supported, and hardware for the hearing impaired has been purchased and installed. The agency's Web site has been tested and meets Department of Information Resources guidelines for ADA compatibility. The agency has not yet made information available in alternative formats such as large print, disc, braille, and audiocassette.
Requires the Commission to collect and analyze statewide data on illegal discriminatory activity in the State, including information from the Commission, the Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and local commissions. Lists information these analyses must include. Requires the Commission to annually report this information to the Governor and the Legislature. Defines "state agency" to include executive branch agencies, the judiciary, and institutions of higher education.	The Commission can identify the number of employment discrimination complaints filed within the State of Texas either with EEOC, the Texas Commission on Human Rights, or local commissions. However, the information does not lend itself to specific analysis, such as the type of employment or housing discrimination.
Requires each state agency to annually submit a report on its hiring practices to the Commission, and requires the Commission to compile and report this information to the Governor and the Legislative Budget Board each year.	Because of formatting changes agreed to by the Commission and the Comptroller, reformatting and analysis will take longer than expected. The Commission will report to the Legislature after January 14, 2001.
Requires the Commission to annually compile equal employment opportunity information, with the assistance of the Comptroller and the Uniform Statewide Accounting System. Lists the types of information the Commission must include. Requires the Commission to analyze this information, and report the results to the Legislature each regular session.	Because of formatting changes agreed to by the Commission and the Comptroller, reformatting and analysis will take longer than expected. The Commission will report to the Legislature after January 14, 2001.

Texas Department of Public Safety
S.B. 370

S.B. 370, as adopted by the 76th Legislature, continued the Department of Public Safety (DPS). The legislation included a total of 28 changes requiring action. The following chart summarizes two provisions that have not been fully implemented and provides the status of each.

Bill Provision	Implementation Status
<p>Requires DPS and the Texas Department of Transportation (TXDOT) to establish procedures to ensure the coordination and development of transportation infrastructure projects that affect both agencies while allowing each to provide comments and advice on transportation planning efforts that affect traffic law enforcement. Requires the agencies to develop a plan to apply for and use federal funds for infrastructure needs that affect enforcement efforts of commercial motor vehicles. Both agencies will update and review procedures and file, not later than January 15 of each odd-numbered year to the Legislature, a report describing the procedures and their implementation.</p>	<p>DPS and TXDOT have established a committee to formalize procedures to ensure the effective coordination and planning of infrastructure projects that affect both agencies. This committee has met four times since it was created. The agencies are currently reviewing a draft Memorandum of Understanding that will define each agency’s responsibilities. Once this Memorandum is in place, the agencies will develop a report to the Legislature detailing their procedures developed under this provision. According to DPS, this report will be submitted to the Legislature by January 15, 2001.</p>
<p>Requires DPS to conduct a needs assessment for the enforcement of commercial motor vehicle rules that considers an inventory of current facilities, enforcement activity, staffing and operating hours of each facility, and needed infrastructure improvements and associated costs. Requires DPS to submit a biennial report, in conjunction with its Legislative Appropriations Request, to the Legislature and the Texas Transportation Commission that summarizes the findings of the assessment.</p>	<p>DPS has entered into an interagency contract with the Texas Transportation Institute and the Center for Transportation Research to conduct a long-term needs assessment for the enforcement of commercial motor vehicle laws. Criteria for this study have been developed and the final report is scheduled to be issued by February 28, 2001.</p>

Texas Department on Aging/Long Term Care Services
S.B. 374

S.B. 374, as adopted by the 76th Legislature, continued the Texas Department on Aging (TDoA). The legislation included a total of 24 changes requiring action by the agency, the Department of Human Services (DHS), the Department of Mental Health and Mental Retardation (MHMR), the Department of Health (TDH), and the Rehabilitation Commission (TRC). The following chart summarizes the three provisions that have been partially implemented and provides their status.

Bill Provision	Implementation Status
Directs the Health and Human Services Commission, the Department on Aging, and the Texas Department of Human Services to assist communities in developing comprehensive, community-based support and service delivery systems for Long-Term Care services.	Throughout Fiscal Year 2000, Area Agencies on Aging have facilitated regional processes for developing local plans of access and assistance. To date, 21 regional plans have been submitted to the Health and Human Services Commission.
Directs TDoA and DHS, with the approval of HHSC, to work to ensure consistency in service standards, reimbursement rates, contract terms and performance standards used by each agency in the provision of similar services.	Meetings determined that the primary need for consistency in terms of this provision was in standards and rules, not contract terms. DHS is revising its meals rules to be consistent with TDoA.
Directs DHS and TDoA to develop standardized assessment procedures to share information on common clients served in a similar service region.	Staff are continuing to work to develop a common "intake." Projected implementation date is September 2001. Area Agencies on Aging will continue to use the DHS Form 2060 as the client assessment until completion.

Texas Rehabilitation Commission

S.B. 1402

S.B. 1402, as adopted by the 76th Legislature, continued the Texas Rehabilitation Commission. The legislation included a total of 23 changes requiring action. The following chart summarizes two provisions that have not been fully implemented and provides the status of each.

Bill Provision	Implementation Status
<p>Updates language to reflect the division of authority between the Commissioner and the Board. Permits the Commissioner to delegate responsibilities to any officer or employee, with the approval of the Board.</p>	<p>At this time, the Board has not amended its rules to require approval of the Board when the Commissioner plans to delegate responsibilities to any officer or employee. Staff will present proposed language regarding this rule to the Board for its consideration at its March 2001 meeting.</p>
<p>Requires the Board to adopt rules and standards governing the determination of rates the Commission will pay for medical and health care services. Requires the Board to annually adopt a schedule of rates, and compare the proposed rate schedule to other cost based rates, including Medicaid and Medicare rates. For any rate adopted that exceeds Medicaid or Medicare, the Board shall document why the adopted rate is necessary. Requires the Board to hold a public hearing prior to adoption of rates to allow the public to present comments.</p>	<p>The Commission is currently in the process of implementing this provision. In January 2000, the Board appointed members to a Rate Analysis Workgroup. This workgroup has established and is following an action plan for developing a rate schedule. The action plan calls for the Board to review the rate schedule in June 2001, and for the provision to be fully implemented by September 2001.</p>

Texas Department of Criminal Justice

S.B. 365

S.B. 365, as adopted by the 76th Legislature, continued the Texas Department of Criminal Justice and established a process for the civil commitment of sexually violent predators upon their release from a correctional facility or discharge from a state hospital. The legislation included a total of 58 changes requiring action. The following chart summarizes the status of three provisions that are being actively pursued but are not fully implemented.

Bill Provision	Implementation Status
Requires TDCJ and the General Services Commission (GSC) to enter into an agreement to expedite the purchase of prison-manufactured products by other agencies.	TDCJ and GSC sought to enter into a memorandum of understanding intended to expedite purchases in 1998, but it was determined to be invalid. GSC refused to reissue the MOU, citing concerns about ensuring compliance with GSC purchasing requirements. GSC has promised to work with TDCJ to identify areas for improvement, and is monitoring TDCJ's purchases, especially its emergency purchases, but has not delegated this expedited purchasing authority.
Requires TDCJ to create or formalize on-the-job training programs for each job performed by an offender in a TDCJ facility. Requires TDCJ to keep records on inmate job training and provide a copy of these records to offenders upon release.	Implementation efforts continue, but full implementation has not yet been achieved. TDCJ, through Texas Correctional Industries, has established on-the-job training programs for certain skilled positions providing marketable job skills. TDCJ is in the process of formalizing on-the-job training for non-skilled positions, but it should be noted "formalization" does not significantly change existing job training efforts. Record keeping remains in the developmental stages, with implementation of an automated system under review.
Requires TDCJ to keep work records for each participant in a work program in a TDCJ facility. Expands the information in these records to include performance evaluations and requires TDCJ to provide a copy of this work record to offenders upon release.	Implementation efforts continue, but full implementation has not yet been achieved. Record keeping remains in the developmental stages, with implementation of an automated system under review. The performance evaluation instrument is also under development. Development of an automated system is considered essential to implementing these provisions.

Texas Board of Private Investigators and Private Security Agencies

H.B. 2617

H.B. 2617, as adopted by the 76th Legislature, continued the Texas Board of Private Investigators and Private Security Agencies. Besides changing the name of the agency to the Texas Commission on Private Security, the legislation contained 66 changes requiring action by the agency. Based on Sunset Commission actions, many of the required changes were intended to streamline the agency processes and focus activities on protecting public safety. Although the agency reports that all changes have been implemented, the current backlog of unprocessed registration applications and investigations gives cause for concern with the success of the recommended changes.

The agency estimates a backlog of over 10,000 applications for registrations. The Sunset staff report on the Board of Private Investigators and Private Security Agencies noted that approximately 17 percent of applicants have a prohibitive criminal record. Since many of the backlogged applicants are allowed to work while waiting agency licensure, as many as 1,700 persons with criminal records could be working though not qualified. A backlog of approximately 5,000 investigations exists, matching a similar number for 1997. Besides these backlogs, a significant number of applications for transfer, renewals, and commissions exist as well. The agency reports that the much of the backlog problem is caused by computer systems problems and hopes to have these corrected with the purchase and implementation of a new software system this year.

APPENDICES

Appendix 1

History of Sunset Commission Action - 1979 to 2001

History of Sunset Commission Action - 1979 to 2001													
	1979	1981	1983	1985	1987	1989	1991	1993	1995	1997	1999	2001*	Total Percent of all Agencies Reviewed
Legislative Session	66th	67th	68th	69th	70th	71st	72nd	73rd	74th	75th	76th	77th	
Agencies Reviewed	26	28	32	31	20	30	30	30	18	21	25	25	316
Agencies Continued	12	22	29	24	18	25	22	19	17	19	23	23	253 (80%)
Agencies Abolished Outright	8	2	3	6	2	3	3	0	0	0	1	1	29 (9%)
Agencies Abolished & Functions Transferred	1	3	0	0	0	2	3	1	1	0	0	1	12 (4%)
Agencies Combined	4	1	0	0	0	0	2	10	0	2	1	0	20 (6%)
Agencies Separated	1	0	0	1	0	0	0	0	0	0	0	0	2 (1%)

*Legislative action has not occurred on these agencies. Action noted is that recommended by the Sunset Commission.

Appendix 2

Sunset Review Schedule - 2003

(39 Reviews)

General Government	<p>Ethics Commission, Texas</p> <p>Immigration and Refugees, Governor's Advisory Committee on Incentive and Productivity Commission, Texas</p> <p>Lottery Commission, Texas</p> <p>People with Disabilities, Texas Council on Purchasing from Veterans Commission, Texas</p>
Health and Human Services	<p>Human Services, Department of</p>
Education	<p>Blind and Visually Impaired, Texas School for the Deaf, Governing Board of the Texas School for the Educator Certification, State Board for Guaranteed Student Loan Corporation, Texas Higher Education Coordinating Board, Texas Real Estate Research Center</p>
Judiciary	<p>Bar of Texas, State</p> <p>Court Reporters Certification Board</p> <p>Law Examiners, Board of</p>
Public Safety and Criminal Justice	<p>Correctional or Rehabilitation Facility Subchapter</p> <p>Polygraph Examiners Board</p>
Natural Resources	<p>Veterans' Land Board</p>
Business and Economic Development	<p>Aerospace Commission, Texas</p> <p>Capital Metropolitan Transportation Authority</p> <p>Corpus Christi Regional Transit Authority</p> <p>Dallas Area Rapid Transit Authority</p> <p>Harris County Metropolitan Rapid Transit Authority</p> <p>Research Laboratory Commission, Texas National Workforce and Economic Competitiveness, Council on Workforce Commission, Texas</p>
Regulatory	<p>Accountancy, Texas State Board of Public Administrative Hearings, State Office of Architectural Examiners, Texas Board of Barber Examiners, State Board of</p>

Regulatory (cont.)

Cosmetology Commission, Texas
Engineers, Texas Board of Professional
Land Surveying, Texas Board of Professional
Plumbing Examiners, Texas State Board of
Licensing and Regulation, Texas Department of
Real Estate Commission, Texas
Self-Directed Semi-Independent Agency Project Act
Structural Pest Control Board, Texas
Tax Professional Examiners, Board of

Appendix 3

Summary of the Texas Sunset Act

Sunset Act

The Texas Sunset Act (Chapter 325, Government Code) was passed by the 65th Legislature and went into effect in August 1977. The Sunset Act is a comprehensive law that provides for automatic termination of most agencies under sunset review, although a few agencies under review are exempt from automatic termination. A state agency is subject to the Sunset Act if it has a date for review or abolishment set in its statute. When a state agency is reviewed, all of its programs and functions are also evaluated and abolished unless specifically recreated.

Commission

The 10-member Sunset Advisory Commission has four members of the Senate and one public member appointed by the Lieutenant Governor, and four members of the House and one public member appointed by the Speaker of the House. The chairmanship rotates between the Senate and the House every two years.

Review Procedure

The Commission is required by law to review the agencies scheduled for termination. The Commission may also expand the scope of a sunset review to include agencies not under review that overlap or duplicate the programs of the agency being reviewed. The Sunset Act sets specific timeframes for the review process and lists the criteria for determining whether a need for the agency exists and reviewing the operations of the agency. The Commission's report on an agency must include a recommendation to abolish or continue the agency and may also contain recommendations to correct problems identified during the review.

Continuing an Agency

If the Commission recommends that an agency be continued, the Commission must have legislation drafted for that purpose and to correct problems identified during the review. An agency is usually continued for 12 years. Although not required by law, the Commission's legislative members traditionally sponsor the legislation to continue an agency.

Terminating an Agency

If an agency is abolished, the Sunset Act provides for a one-year period for the agency to wind down its operations. The agency retains full authority and responsibility until the end of that year. At the end of the year, all property and records are transferred to the appropriate state agency.

Compliance Reviews

The Sunset Advisory Commission is required by law to examine an agency's actions after a Sunset review to determine if the agency has implemented the recommended statutory changes. The State Auditor is also required to examine and report on the agency's compliance with non-statutory management changes recommended by the Commission.

Sunrise Laws

The Legislature passed a “sunrise” law in 1985 that requires the Sunset Advisory Commission to comment on proposed new regulatory agencies and advisory committees. The Commission reviews the proposed legislation and sends a written response to the bill’s sponsor and to the chair of the committee that will hold hearings on the bill. The sunrise process enables the Legislature to use the Commission’s experience in considering the need for new regulatory agencies.

Review Criteria

In reviewing an agency, the Texas Sunset Act sets out specific criteria that must be considered in determining the need to continue that agency. In addition, the Sunset Act requires the Commission’s staff to evaluate each agency on the basis of the criteria contained in the Act and to issue a report detailing the findings of the evaluation. A summary of the criteria established by the Sunset Act is set out below.

1. Efficiency of operation.
2. Extent to which statutory objectives have been achieved.
3. Assessment of less restrictive or alternative methods of regulation.
4. Extent to which existing advisory committees are needed and used.
5. Extent of duplication or overlapping jurisdictions and possibilities for consolidation with other agencies.
6. Whether the agency has recommended statutory changes that benefit the general public rather than the regulated entity.
7. Promptness and effectiveness with which the agency handles complaints.
8. Extent to which the agency has encouraged participation by the public and the extent to which resulting rules are compatible with agency objectives.
9. Extent of compliance with federal and state requirements regarding equality of employment opportunity and the rights and privacy of individuals.
10. Extent to which changes are needed to the agency’s statute to enable it to comply with Sunset criteria.
11. Extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees.
12. Extent to which the agency complies with the Open Records Act and the Open Meetings Act.
13. Impact in terms of federal intervention or loss of federal funds if the agency is abolished.

Coordination with Other Oversight Agencies

The Sunset Commission coordinates its review efforts with those of the other legislative agencies with oversight responsibilities: the Legislative Budget Board and the State Auditor’s Office. As required by law, the three agencies have established a committee which meets on a monthly basis to coordinate oversight activities. A representative of the Texas Performance Review Division of the Comptroller’s Office also participates in these coordination meetings. This effort has led to joint review work between the Sunset Commission and the Legislative Budget Board during the Commission’s current review cycle as well as staff support for projects by the State Auditor’s Office.